Rule 21-35 S. J. Fields

March 3d 75

TRANSCRIPT OF RECORD.

REME COURT OF THE UNITED STATES.

No. 219.

CHARLES B. HOTCHKISS, APPELLANT,

vs.

NATIONAL SHOE & LEATHER BANK OF NEW YORK CITY AND THE TRADESMEN'S NATIONAL BANK.

AL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 9, 1873.

10/9/1873

Transcripts
of
Records
1874

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Supreme Court of United States
21st Wallace
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vs.

THE NATIONAL SHOE & LEATHER BANK OF NEW YORK CITY AND THE TRADESMEN'S NATIONAL BANK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 The President of the United States of America to the [SEAL.] National Shoe and Leather Bank, the Tradesman's National Bank, and the Milwaukie and St. Paul Railway Company, greeting:

You are hereby summoned that you and each of you personally appear before the judges of the circuit court of the United States of America, for the southern district of New York, in the second circuit court, in equity, on the first Monday of June, A. D. 1870, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Charles B. O. Hotchkiss, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 23d day of April, in the year one thousand eight hundred and seventy- and of the Independence of the United States of America the ninety-fourth.

KENNETH G. WHITE, *Clerk.*

C. W. BANGS,
Compl't Sol'r.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of June, 1870, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

Served personally on the cashier of the National Shoe and Leather Bank, April 25, 1870.

Served personally on the cashier of the Tradesman's National Bank, April 25, 1870.

Served personally on Mr. Russell Sage, of the Milwaukie and St. Paul Railway Company, April 25, 1870.

W. M. JR., *Def't.*
GEO. H. SHARPE,
U. S. Marshal.

JUNE 3, 1870.
Filed June 4, 1870, E. 77.

1½ To the honorable the judges of the circuit court of the United States for the southern district of New York, in equity:

Charles B. Hotchkiss, of Bridgeport, in the State of Connecticut, a citizen of the State of Connecticut, brings this his bill of complaint against the National Shoe and Leather Bank of the city of New York, a corporation located and doing business at and in the city of New York, in the State of New York, a citizen of the said State, and being a corporation and banking association duly incorporated and organized under and in pursuance of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and against the Tradesmen's National Bank of the city of New York, a corporation and banking association duly incorporated and organized under and in pursuance of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25th 1863, and located and doing business at and in the city of New York, in the State of New York, a citizen of the said State,

and also against the Milwaukee and St. Paul Railway Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the State of Wisconsin, a citizen of the State of Wisconsin.

And thereupon your orator complains and says: That on or
2 about the sixth (6th) day of May, eighteen hundred and sixty-three, (1863,) the defendant, the Milwaukee and St. Paul Railway Company, executed three (3) certain obligations and contracts under the seal of the said company, and attested by the signatures of the president and secretary thereof, of which copies are hereto annexed marked respectively Exhibits 1, 2, and 3.

Your orator further shows that by the charter or act of incorporation of the said Milwaukee and St. Paul Railway Company your orator, as the holder of the said obligations and the scrip attached thereto, was entitled to vote at elections for directors of said company; and your orator was not only identified in said obligations and contracts as the holder, and entitled to the benefit thereof, but was registered upon the books of said company as the holder of the said obligations or contracts and entitled to the benefit thereof, and your orator still remains so registered upon the books of the said company, and your orator has never in any way transferred the said scrip, nor the said obligations, nor any or either of them, upon the books of the said company at their office in the city of New York or elsewhere, in person or by attorney, or otherwise, and has never surrendered nor canceled the said bonds, nor the said certificates, nor either of them.

Your orator further shows that on or about the twenty-ninth day of November, eighteen hundred and sixty-eight, he was in possession of the said bonds and the said several certificates thereto attached, at Bridgeport, in the State of Connecticut, when the same were fraudulently and feloniously stolen and carried away from your orator by some person to your orator unknown.

Your orator further shows that each of said contracts and obligations, with the certificate thereto annexed and forming part thereof, constituted in fact but one instrument, and that the several parts thereof were not capable of separation and division in such way as that the title to one part thereof could be transferred to one person and the title to some other part thereof to another person; but that, as your orator is
3 informed and believes, and therefore alleges, the owner or holder of said certificates of scrip preferred stock could not get the benefit thereof without possession of the remaining parts of said contracts or obligations, and the holder of the remaining parts of said obligations or contracts could not get and was not entitled to a performance of the same as against said railway company without possession of said certificates of scrip preferred stock, and upon the face of said obligations or contracts reference was expressly made in the several parts thereof to other parts of the same obligation or contract, so that the holder of one portion thereof was chargeable with notice of the rights of the holder of the other portion thereof.

Your orator further shows that, as he is informed and believes, and therefore alleges, after the stealing and purloining of the said contracts or obligations and certificates as aforesaid, the person or persons by whom such purloining was affected detached from each of the said obligations so much thereof as existed in the form of a certificate for scrip preferred stock identifying your orator as the holder thereof.

And your orator further shows that, as he is informed and believes, by means and in consequence of the felony and fraud aforesaid, the defendant, The Tradesmen's National Bank of the city of New York,

obtained possession, remotely, from the person or persons who had been guilty of the fraud and felony aforesaid, or from the agents or transferees of such person or persons, but without any transfer having been executed or delivered by your orator to any person whomsoever, and without your orator's knowledge or consent, and thereby became a holder of so much and such parts of the said obligations and contracts which were, respectively, numbered two thousand and seventy (2,070) and two thousand four hundred and twenty-five, (2,425,) as remained after the detaching of the scrip certificates thereto attached; and the

4 defendant, The National Shoe and Leather Bank of the city of New York, by means and in consequence of said fraud and felony, obtained possession, remotely, from the person or persons who had been guilty of such fraud and felony, or from the agents or transferees of such person or persons, but without any transfer having been executed or delivered by your orator to any person whomsoever, and without your orator's knowledge or consent, and thereby became the holder of so much and such parts of the said contract or obligation numbered nineteen hundred and forty-seven (1,947) as remained after the detaching of the certificates of preferred stock thereto annexed; and the said The Tradesmen's National Bank, and the said The National Shoe and Leather Bank, severally and respectively, received the aforesaid respective portions of said contracts or obligations in bad faith, and had at the time or times of receiving the same, respectively, notice from the contents and references thereof of the issuing and attachment as aforesaid of the said certificates, and of the contents thereof, and of the aforesaid fraudulent and felonious detaching of the same; but the said banks, respectively, continue to retain so much and such parts of the said contracts as were received by them, respectively, as aforesaid, notwithstanding that your orator has made known to the said banks, respectively, his rights in the premises, and has demanded from them restitution of so much of the said contracts and obligations as are in the possession of the said banks, respectively.

Your orator further shows that by reason of the said banks, respectively, having possession of so much of the said contracts and obligations as have come into their possession, respectively, as aforesaid, your orator has been prevented from collecting the coupons for the payment of interest, attached to the said respective contracts or obligations, and the said banks have demanded from the defendant, The Milwaukee and St. Paul Railway Company, payment of said coupons as they respectively matured, but that the defendants, The Milwaukee and

5 St. Paul Railroad Co., having been notified by your orator of the stealing and purloining of his property as aforesaid, have declined to recognize the said banks, severally, as the owners and holders of the said contracts, or as being interested therein, and have declined to make payment of said coupons so presented as aforesaid, and retain money which from time to time became due upon such coupons, and that your orator, having been feloniously and fraudulently deprived of the scrip which was attached to or formed a part of the said contracts or obligations, has been unable to transfer the said bonds, or to produce to the said corporation evidence of the right and title of your orator thereto, and by means of the premises it has become impossible for the said railway company to determine who is truly and actually entitled to the benefit of the said contracts or obligations, and your orator is likely to be impleaded by the said railway company and by the said banks, respectively, in several and separate suits for the purpose of determining the title to and the value of the said contracts or obligations; and by means of the

premises your orator has been and is impeded and prevented from exercising the right of conversion given by said contracts, and from exercising the right secured by said certificates of surrendering said obligations and receiving certificates for full paid preferred stock in lieu thereof.

And your orator further shows that while, as he is informed and believes, so much and such parts of said contract as have come to the possession of said banks respectively are not of themselves marketable, so that in an action at law for the recovery or conversion of the same your orator might not be able by proof to establish any recognized measure of damages for the taking, detention, or conversion of the same, yet the continued detention thereof hinders and obstructs him in collecting from said railway company any moneys on account of the same, and hinders and obstructs him in the enjoyment of his rights as the true and lawful holder of each and every part of the said contracts and obligations, and so such detention is the cause of great and irreparable damage to him, for which he has no adequate remedy at law.

6 To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, hearsay, and belief, full, true, direct, and perfect answer make to the statements and charges of this bill, and that as fully and particularly as if the same were here repeated, and they thereunto distinctly interrogated; and that it may be decreed that, notwithstanding the said theft and purloining of the said contracts and obligations, and notwithstanding the detachment as aforesaid of the scrip thereto attached and forming part thereof, your orator still continues to remain, as against the said defendants, the true and lawful owner of the said contracts and obligations, and each and every part, clause, and condition thereof, and that the said defendants, The National Shoe and Leather Bank and The Tradesmen's National Bank of the City of New York may be respectively decreed to surrender and deliver up to your orator the possession of such contracts and obligations, and such parts thereof, as remain in their possession, and to account to your orator for all sums of money collected by them respectively upon or by reason of the same, and that, pending this action, and by the final decree of the court therein, the defendant, The Milwaukee and St. Paul Railway Company, may be restrained and enjoined from making any payment on account of the said contracts or obligations to any person other than your orator or his representatives, and may be decreed to issue to your orator new certificates of preferred stock in the place of the said certificates stolen from your orator as aforesaid, and may be decreed to admit your orator to all the rights and privileges contracted for by the said company in the said obligations or contracts, notwithstanding any pretence of claim or right on the part of the said banks respectively, or either of them: and that a receiver of the said contracts or obligations, or of so much or such parts thereof as may be in the possession of the defendants, re-

7 spectively, may be appointed by your honors pending this suit, with the usual power of such receivers in like case; and that your orator may have such further or other relief as the nature of his case may require and as to your honors may seem meet:

May it please your honors, the premises considered, to grant unto your orator not only the writ of injunction issuing out of this court, and under the seal thereof, directed to the said The Milwaukee and St. Paul Railway Company, the Tradesmen's National Bank of the city of New York, and The National Shoe and Leather Bank, their attorneys, ser-

vants and agents, restraining and enjoining them according to the prayer of this bill, but also the writ of subpœna, issuing out of this court, and under the seal thereof, commanding them, and each of them, under a certain penalty to be therein expressed, to be and appear at a certain time, to be therein named, before this honorable court, to answer your orator's bill of complaint, and to do further and abide whatever this honorable court shall then direct.

And your orator will ever pray, &c.

C. W. BANGS,
Solicitor for Plaintiff.

F. N. BANGS,
Of Counsel for Plaintiff.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

CHARLES B. HOTCHKISS, being duly sworn, deposes and says that he is the plaintiff in this cause named in the foregoing bill; that he has read the said bill and knows the contents thereof; that the matters and things contained and set forth in said bill so far as they relate to his own acts are true, and so far as they relate to the acts and deeds of other persons he believes them to be strictly true, and that unless an injunction is issued according to the prayer of said bill forthwith, he believes that he shall suffer great and irreparable damage from
8 the violation and infringement of his rights by the defendants above complained of.

C. B. HOTCHKISS.

Sworn to and subscribed before me this 23d day of April, 1870.
W. B. NASSAU,
Notary Public City and County of N. Y.

EXHIBIT 1.

"UNITED STATES OF AMERICA:

"Sixty coupons attached. Last six months' interest, $35, payable with bond.

"$1,000.] STATE OF WISCONSIN. [$1,000.

"*Milwaukee and St. Paul Railway Company.*

"Number 1,947.] U. S. coat of arms. [Number 1,947.

"Know all men by these presents that the Milwaukee and St. Paul Railway Company are indebted to Isaac Seymour, Horace Galpen, William Gould, Fred P. James, D. M. Hughes, George Smith, and Francis Vose, citizens of the State of New York, or bearer, in the sum of one thousand dollars, for the purchase-money of their entire corporate property, which sum said company promise to pay to the bearer hereof on the 1st day of January, A. D. 1893, at the office or agency of the company, in the city of New York, with interest thereon from the 1st day of July, A. D. 1863, at the rate of seven per centum per annum, payable semi-annually, at its office or agency in the city of New York, on the first days of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due, and in case of non-payment of interest for six months, then without demand

or notice the principal of this bond shall become due and payable.

9 "The said company also agree to make the scrip preferred stock attached to this bond full-paid stock at any time within ten days after any dividend shall have been declared and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond and the unmatured interest-warrants. This bond is one of a series of bonds amounting to $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then this issue of bonds may be increased $200,000; and if the company acquire the Milwaukee and Western Railroad, and extend it from Columbus to Portage, then this issue may be increased $2,000,000; and if the company acquire the Milwaukee and Horicon Railroad, this issue of bonds may be increased $400,000.

"All of which bonds are executed and delivered in conformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors. And the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac Seymour & N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863, and also to the benefits to be derived from a sinking-fund established by and in said mortgage or deed of trust of all such sums of money as are received from the sales of lands donated or granted to this company by the United States or by the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon and duly signed by both of said trustees or their or his successor or successors, and is issued, received, and held, subject to the terms and conditions contained in said mortgage. In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this sixth day of May, A. D. 1863."

SEAL OF MILWAUKEE & ST. PAUL R. R. CO. (S'd) "RUSSELL SAGE, JR., *Secretary.*
(S'd) "D. M. HUGHES, *Pres't.*

Coupon, No. 16.

$35.] [$35.

10 The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1870, in the city of New York, for interest due on bond No. 1947.

H. E. GLASFORD, *Agent.*

Coupons in this form attached to bond from No. 17 to No. 60, both inclusive, in addition to the one given in margin.

Date of transfer.	To whom transferred.	Attest by transfer-agent.

Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863, and also to the benefits to be derived from a sinking fund established by and in said mortgage or deed of trust of all sums of money as are received from the sale of lands donated or granted to this company by the United States or the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon and duly signed by both of said trustees, their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage. In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this sixth day of May, A. D. 1863.

(SEAL OF THE MILWAUKEE & ST. PAUL R. R. CO.) "(S'd) RUSSELL SAGE, JR., *Secretary.*
( ) "(S'd) D. M. HUGHES, *President.*"

$35.] [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1870, in the city of New York, for interest due on bond No. 2070.

H. E. GLASFORD, *Agent.*

No. 15.

(Coupons in this form attached to bond from No. 16 to No. 60, both inclusive, in addition to the one given in margin.)

Date of transfer.	To whom transferred.	Attest by transfer agent.
186.		

(Endorsed on the back.)

"$1,000 bond No. 2070. First mortgage Milwaukee and St. Paul Railway Company; 7 per cent. convertible. Interest January and July. Due Dec., 1893. This is to certify that this bond is included in a first mortgage of the entire corporate property, real and personal, rights, franchises, and immunities of the Milwaukee and St. Paul Railway Company, in trust to the undersigned to secure the payment of $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Western Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional.

(Signed) I. SEYMOUR,
N. A. COWDREY,
Trustees.

"Shares $100 each, on which $1 per share has been paid.

(Printed on the back.)

"Know all men by these presents that for value received have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto

or notice the principal of this bond shall become due and payable.

9 "The said company also agree to make the scrip preferred stock attached to this bond full-paid stock at any time within ten days after any dividend shall have been declared and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond and the unmatured interest-warrants. This bond is one of a series of bonds amounting to $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then this issue of bonds may be increased $200,000; and if the company acquire the Milwaukee and Western Railroad, and extend it from Columbus to Portage, then this issue may be increased $2,000,000; and if the company acquire the Milwaukee and Horicon Railroad, this issue of bonds may be increased $400,000.

"All of which bonds are executed and delivered in conformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors. And the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac Seymour & N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863, and also to the benefits to be derived from a sinking-fund established by and in said mortgage or deed of trust of all such sums of money as are received from the sales of lands donated or granted to this company by the United States or by the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon and duly signed by both of said trustees or their or his successor or successors, and is issued, received, and held, subject to the terms and conditions contained in said mortgage. In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this sixth day of May, A. D. 1863."

(SEAL OF MILWAUKEE) (S'd) "RUSSELL SAGE, JR., *Secretary.*
(& ST. PAUL R. R. CO.) (S'd) "D. M. HUGHES, *Pres't.*

Coupon, No. 16.

$35.] [$35.

10 The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1870, in the city of New York, for interest due on bond No. 1947.

H. E. GLASFORD, *Agent.*

Coupons in this form attached to bond from No. 17 to No. 60, both inclusive, in addition to the one given in margin.

Date of transfer.	To whom transferred.	Attest by transfer-agent.

"Shares $100 each, on which $1 per share has been paid.

(Printed on the back.)

"Know all men by these presents that for value received have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto

...issue $2,000,000; and if the company acquire the Milwaukee and Horicon Railroad, this issue of bonds may be increased $400,000. All of which bonds are executed and delivered in conformity with the laws of Wisconsin and the articles of association of the company, the vote of the stockholders, and the resolution of the board of directors. And the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac

...and if the company acquire the Milwaukee and
...d, this issue of bonds may be increased $400,000. All
... are executed and delivered in conformity with the laws
...nd the articles of association of the company, the vote
...lers, and the resolution of the board of directors. And
...of is entitled to the security derived from a mortgage or
...luly executed and delivered by said company to Isaac

Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863, and also to the benefits to be derived from a sinking fund established by and in said mortgage or deed of trust of all sums of money as are received from the sale of lands donated or granted to this company by the United States or the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon and duly signed by both of said trustees, their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage. In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this sixth day of May, A. D. 1863.

{ SEAL OF THE MILWAUKEE & ST. PAUL R. R. CO. } "(S'd) RUSSELL SAGE, JR., *Secretary.*
{ } "(S'd) D. M. HUGHES, *President.*"

$35.] [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1870, in the city of New York, for interest due on bond No. 2070.

H. E. GLASFORD, *Agent.*

No. 15.

(Coupons in this form attached to bond from No. 16 to No. 60, both inclusive, in addition to the one given in margin.)

Date of transfer.	To whom transferred.	Attest by transfer agent.
186.		

(Endorsed on the back.)

"$1,000 bond No. 2070. First mortgage Milwaukee and St. Paul Railway Company; 7 per cent. convertible. Interest January and July. Due Dec., 1893. This is to certify that this bond is included in a first mortgage of the entire corporate property, real and personal, rights, franchises, and immunities of the Milwaukee and St. Paul Railway Company, in trust to the undersigned to secure the payment of $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Western Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional.

(Signed) I. SEYMOUR,
N. A. COWDREY,
Trustees.

Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863, and also to the benefits to be derived from a sinking fund established by and in said mortgage or deed of trust of all sums of money as are received from the sale of lands donated or granted to this company by the United States or the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon and duly signed by both of said trustees, their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage. In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this sixth day of May, A. D. 1863.

(SEAL OF THE MILWAUKEE & ST. PAUL R. R. CO.) "(S'd) RUSSELL SAGE, JR., *Secretary.*
( ) "(S'd) D. M. HUGHES, *President.*"

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(Signed) I. SEYMOUR,
N. A. COWDREY,
Trustees.

Date of transfer.	To whom transferred.	Attest by transfer-agent.
186		

(Endorsed on the back :)

"$1,000 bond, No. 2425. First mortgage Milwaukee and St.
18 Paul Railway Company seven per cent., convertible. Interest Jan'y and July. Due 1893. This is to certify that this bond is inclu'ed in a first mortgage of the entire corporate property, real and personal, rights, franchises, and immunities of the Milwaukee and St. Paul Railway Company, in trust, to the undersigned, to secure the payment of $4,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of the $2,000,000 additional, and if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional.

(Signed) "I. SEYMOUR,
"N. A. COWDREY,
"*Trustees.*

"*Certificate for scrip preferred stock.—Issued Sept.* 17, 1864

"No. 7669.] [Ten shares.

"This is to certify that Charles B. Hotchkiss, of Bridgeport, is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as 'scrip preferred stock,' in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage bond No. 2425 of the company, and all unmatured coupons thereon, at any time within ten days after any dividends shall have been declared and become payable on the full stock of the preferred stock of this company, the said C. B. Hotchkiss is entitled to receive ten shares of said full-paid preferred stock.

"This stock is transferable only on the books of the company at their office, in the city of New York, in person or by attorney, on the surrender of this certificate.

"This certificate and the stock represented hereby is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.

19 "In witness whereof the company have caused this certificate to be signed by the president.

"D. M. HUGHES,
"*President.*
"C. P. GILPIN,
"*Transfer Agent.*

"Countersigned by "BOKEE,
"*Registrar of Transfers.*

"Shares $100 each, on which $1 per share has been paid."

(Printed on the back:)

"Know all men by these present that , for valued received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto shares of the scrip stock of the Milwaukee and St. Paul Railway Company standing in name on the books of the said company, and hereby constitute and appoint , true and lawful attorney, irrevocably for an in name and stead, but to use, to sell, assign, transfer and set over all or any part of the said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

"In witness whereof I have hereunto set hand this day of one thousand eight hundred and sixty.

"Signed and delivered in presence of—"

(Endorsed:) U. S. circuit court. In equity. Charles B. Hotchkiss vs. The National Shoe & Leather Bank et al. Bill of complaint as amended. C. W. Bangs, sol. for pl'ff. Filed Jan'y 25, 1871.

20 U. S. circuit court.

CHARLES B. HOTCHKISS
ag'st
THE NATIONAL SHOE & LEATHER BANK, impleaded with The Tradesmen's National Bank & The Milwaukee & St. Paul Railway Company.

SIR: You will please to enter our appearance for the defendant, The Shoe & Leather National Bank, in this cause.

Dated June 6, 1870.

BEACH & BEMAN,
Solicitors for s'd Def'ts, No. 30 Broad street, N. Y. City.

To KENNETH G. WHITE, esq., *clerk.*

(Endorsed:) U. S. circuit court. Charles B. Hotchkiss ag'st The National Shoe & Leather Bank, implead., &c. Appearance of def'ts Beach & Beman, sol'rs of s'd def'ts, No. 30 Broad st., N. Y. Filed June 6, 1870.

21, 22 U. S. circuit court.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE & LEATHER BANK ET AL.

SIR: Please enter my appearance in this cause as solicitor for the defendant, The Milwaukee & St. Paul Railway Company, & waive the right to answer or demur to the bill.

Dated May 2d, 1870.

J. HOUGH,
Solicitor, &c.

To KENNETH G. WHITE, Esq., *Clerk.*
C. W. BANGS, Esq., *Sol'r for Pl'ff.*

(Endorsed:) U. S. circuit court, southern district of New York. Charles B. Hotchkiss vs. The National Shoe & Leather Bank et al. Notice of appearance. J. Hough, sol'r, &c., for the Mil. & St. Paul Railway Company, 196 Broadway.

23 I admit due service of the within.
Dated May 2d, 1870.

C. W. BANGS,
Sol'r for Pl'ff.

Filed Dec'r 3d, 1872. S. B.

24 At a stated term of the circuit court of the United States for the southern district of New York, held at the court-rooms thereof on the 3d day of December, 1872. Present, Hon. Samuel Blatchford, J.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE & LEATHER BANK ET AL.

The appearance of John Hough, esq., as solicitor for the defendant, The Milwaukee and St. Paul Railway Company, dated May 2nd, 1870, with an admission of due & timely service thereof endorsed thereon not having been actually filed with the clerk until this day, and it appearing by inspection thereof that the said defendant thereby waived the right to answer or demur to the bill, now on motion of F. W. Bangs, of counsel for the plaintiff, said solicitor consenting, it is ordered that the appearance of the said defendant, by the said solicitor, be entered as of May 2nd, 1870, nunc pro tunc, with leave to the plaintiff to enter an order as of this day taking the bill as confessed as against the said railway company.

SAM'L BLATCHFORD.

25 (Endorsed:) U. S. circuit court. Charles B. Hotchkiss vs. The National Shoe & Leather Bank et al. Order as to Milwaukee & St. Paul Railway Company. C. W. Bangs, sol'r.

We consent to the entry of the within order.

J. HOUGH,
Solicitor for the Def't, the Mil. & St. Paul Railway Co.
C. W. BANGS,
Sol'r for Pl'ff.

26 *The answer of the defendant, the Tradesmen's National Bank, to the amended bill of complaint.*

This defendant, now and all times hereafter saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such part thereof as this defendant is advised is material for it to make answer thereunto, answering and admits that on or about the sixth day of July, 1863, the defendant, The Milwaukee and St. Paul Railway Company, executed three certain obligations, under the seal of the said company and attested by the signatures of the president and secretary thereof, and which were numbered respectively 1947, 2070, and 2425, and were re-

spectively of the tenor and effect stated in the said bill of complaint, and contained thereon the certificate or endorsement of Messrs. N. A. Cowdrey and J. Seymour, trustees, of the tenor and effect also stated in said bill of complaint.

And this defendant also admits that interest-coupons for thirty-five dollars each were attached to each of said bonds; but it states that the number thereof was unknown to this defendant.

And this defendant further states that whether or not the said defendant, The Milwaukee and St. Paul Railroad Company, executed and delivered certificates for scrip preferred stock, in the form set out in the bill of complaint herein, or in any other form or manner whatsoever, nor whether or not the same had printed on the back thereof, or otherwise, the form of transfer set forth in the said bill of complaint, nor whether or not the same were numbered as stated in said bill, nor whether or not by the charter or act of incorporation of the said The Milwaukee and St. Paul Railway Company, the complainant, as the holder of the said obligations and the said alleged scrip alleged to be attached thereto, was entitled to vote at elections for directors of said company; nor whether or not the complainant was registered upon the books of said company as the holder of the said obligations or contracts, and entitled to the benefit thereof; nor whether or not he still remains so registered, or whether or not that he has ever in any way transferred
27 the said scrip or the said obligations, or any or either of them, upon the books of said company, or otherwise, in the city of New York or elsewhere, in person or by attorney, or otherwise; or whether or not the said plaintiff has ever cancelled the said certificates, or either of them, this defendant has no knowledge nor any information, and can neither admit or deny the allegations or statements in that behalf contained in said bill, and leaves the complainant to make such proof thereof as he may be advised; but this defendant denies that said complainant was identified in said obligations and contracts as the holder and entitled to the benefit thereof; and it admits that the said complainant never cancelled or surrendered the said bonds.

That whether or not, on or about the 29th day of November, 1868, or at any other time, the complainant was in possession of said three bonds and the said several certificates alleged to have been thereto attached, or any of them, at Bridgeport, in the State of Connecicut, or elsewhere; nor whether the same, or any of them, were fraudulently or feloniously stolen or carried away from him by any person to him unknown, this defendant states that it has no knowledge nor any information thereof, and can neither admit or deny the same, and leaves the complainant to make such proof thereof as he may be advised.

This deponent denies that such of said contracts and obligations with the alleged certificate of scrip claimed to be thereto annexed, formed part thereof, and constituted in fact but one instrument.

This defendant also denies that upon the face of said obligations or contracts reference was expressly made in the several parts thereof to other parts of the same obligations or contracts, so that the holder of one portion thereof was chargeable with notice of the rights of the holder of the other portion thereof.

That whether or not the holder and owner of said certificate of scrip preferred stock could not get the benefit thereof without possession of the remaining part of said contracts or obligations, this defendant
28 states that it has no knowledge or any information, and can neither admit or deny the same, and leaves the complainant to make such proof thereof as he may be advised.

And this defendant denies that the said several contracts and obligations with the certificates of scrip preferred stock alleged to have been issued therewith were not capable of separation and division in such way as that the title to one part thereof could be transferred to one person and the title to some other part to some other person, and this deponent states that the title to said bonds could be passed by delivery, without delivery of the said alleged scrip preferred stock.

And this defendant denies that the holder of said obligations could not get and was not entitled to a performance of the same as against said railway company, without possession of said certificates of scrip preferred stock.

That whether or not after the alleged stealing or purloining of said contracts or obligations and certificates the person or persons by whom such alleged purloining was effected detached from each of the said obligations so much thereof as existed in the form of a certificate for scrip preferred stock identifying the complainant as the holder thereof and destroyed the same, or whether or not this defendant obtained possession remotely from the person or persons who had been guilty of the alleged fraud or felony aforesaid, or from the agents or transferees of such person or persons, but without any transfer having been executed or delivered by the complainant to any person and without his knowledge; or whether or not the defendant, The National Shoe and Leather Bank, by means and in consequence of said alleged fraud and felony obtained possession remotely from the person or persons who had been guilty of such fraud and felony, or from the agents or transferees of such person without any transfer having been executed and delivered by complainant and thereby became the holder of so much and such parts of the said contract or obligation numbered 1947, as remained after the detaching and destruction of said alleged certi-
29 ficate of scrip preferred stock, nor whether or not the said The National Shoe and Leather Bank received said portion of said contract or obligation in bad faith and had at the time of receiving the same notice from the contents and references thereof of said alleged issuing and detachment of the said certificates and of the contents thereof and of the aforesaid fraudulent and felonious detaching and destruction of the same, nor whether or not said The National Shoe and Leather Bank continues to retain so much and such parts of said contract as were received by it; nor whether or not the complainant has made known to it his rights in the premises, and has demanded from it said portion of said contract, nor whether or not by reason of said The National Shoe and Leather Bank having possession of so much of said contract as is alleged to have come into its possession, the complainant has been prevented from collecting the coupons attached to the same; nor whether or not it has demanded from said railway company, the payment of said coupons, nor whether or not said Milwaukee and St. Paul Railway Company having been notified by complainant of said alleged purloining of his property have declined to recognize said The National Shoe and Leather Bank as owner and holder of said contract or obligation, and have refused to pay said coupons, and retain money which from time to time became due on said coupons; nor whether or not complainant having been feloniously and fraudulently deprived of said scrip, has been unable to transfer said bond or to produce to said corporation evidence of his right and title thereto, this defendant states that it has no knowledge or any information thereof, and cannot deny or admit the same, and leaves the complainant to make such proof thereof as he may be advised.

This defendant admits that it is the holder of so much and such parts of the said contracts or obligations which were respectively numbered 2070, and 2425, as remained after the alleged scrip certificates thereto claimed to have been attached.

30 And this defendant denies that it received the same, or either of them, or any part thereof in bad faith, and at the time of receiving the same it had notice from the contents and references thereof of the issuing and attachment as aforesaid of the said alleged certificates and the contents thereof, and of the aforesaid alleged fraudulent and felonious detaching of the same, and defendant admits that it continues to retain so much and such parts of said contracts as were received by it, notwithstanding any alleged rights of complainant made known to it, and his demand for the same.

And defendant admits that by reason of this defendant having possession of said two bonds the complainant has been prevented from collecting the coupons for the payment of the interest attached to them, and that it demanded from said railway company the payment of said coupons as they severally matured, and that said railway company declined to make payment thereof, and that complainant has been unable to transfer the said bonds.

That whether or not said complainant notified said railway company of said alleged stealing and purloining of his property, nor whether or not said railway company have declined to recognize this defendant as the owner and holder of said two bonds or as being interested therein, nor whether or not complainant having been feloniously and fraudulently deprived of said alleged scrip, has been unable to produce to the said corporation evidence of his right and title thereto; nor whether or not the complainant was or is likely to be impleaded by said railway company and by said defendant, The National Shoe and Leather Bank, in several or separate suits, for the purpose of determining the title to and the value of the said contracts or obligations, or any of them; nor whether or not by means of the premises the complainant has been impeded and prevented from exercising the right secured by said alleged certificates of surrendering said obligations and receiving certificates for full paid preferred stock in lieu thereof, this defend-

31 ant has no knowledge nor any information thereof, and can neither admit or deny the same, and leaves the complainant to make such proof thereof as he may be advised.

And this defendant denies that it has become impossible for the said railway company to determine who is truly and actually entitled to the benefit of the said contracts or obligations.

And it denies that complainant is likely to be impleaded by this defendant in any suit for the purpose of determining the title to and the value of the said contracts or obligations.

And it denies that so much and such parts of said contracts as have come to the possession of this defendant and the defendant The National Shoe and Leather Bank, are not marketable; and that in an action at law for the recovery or conversion of the same, complainant might not be able by proof to establish any recognized measure of damages for the alleged taking, detention, or conversion of the same, and it admits that the alleged continued detention thereof hinders and obstructs complainant in collecting from said railway company any moneys on account of the same, and hinders and obstructs him in the enjoyment of his alleged rights as the true and lawful holder of each and every part of the said contracts and obligations; and it denies that

such detention is the cause of great and irreparable damage to complainant for which he has no adequate remedy at law.

And this defendant states that it received and became the owner and holder of said two bonds, numbered 2070 and 2425, as follows: That on or about the 22d day of January, 1869, B. Starr Midgley applied to defendant to discount for him his, said Midgely's, promissory note for eight hundred dollars, and to receive one of said bonds as collateral thereto. That thereupon such discount was made and the proceeds thereof paid over by defendant to him, this defendant, at the time thereof, receiving such note and said bond. That afterwards,
32 and on or about the 29th day of January, 1869, the said Midgely applied to defendant to discount for him said Midgely's promissory note for sixteen hundred dollars, to become due March 29th, 1869, and to hold said bond already held by them, and to receive the other of said two bonds as collateral for the payment of said note, the amount of said eight hundred dollar note to be deducted from the proceeds of said note for sixteen hundred dollars, and to be thereby paid and surrendered to said Midgley; that thereupon such discount was made by this defendant upon the faith of the security of said two bonds and the proceeds of such discount, after deducting the amount of said note for eight hundred dollars, was by defendant paid over to him, said Midgely, and such other bonds delivered to defendant, and said eight-hundred dollar note surrendered and delivered up to said Midgely; that such discounts respectively were made by the defendant in the regular and usual course of its business as a bank, and upon the faith of the security of said two bonds which were received by it in good faith from said Midgely, and without any knowledge or notice whatever of said complainant's alleged title or claim thereto; that such note for sixteen hundred dollars has not been paid, but has been renewed by said Midgely from time to time, and that on or about the fourth day of February, 1870, the said B. Starr Midgely made and delivered to defendant his certain promissory note, in further renewal of said note for sixteen hundred dollars, and also to secure the further sum of one hundred and fifty dollars owing by him to defendant, and for the interest thereon, which last-mentioned note is now held by defendant, and a copy whereof is as follows:

"$1,791.75.] NEW YORK, *Feb.* 4, 1870.

"On demand, after date, I promise to pay to the Tradesmen's National Bank, or order, seventeen hundred ninety-one dollars and seventy-five cents for value received, with interest from the date hereof, at the rate of 7 per cent. per annum, having deposited with it, as collateral
33 security, 2,000 Milwaukee and St. Paul 7 per cent. bonds, with authority to sell the same at the broker's board, or at public or private sale, or otherwise at its option, on the non-performance of this promise, without notice.

"B. STARR MIDGELY."

[U. S. int. rev. stamp, 90 cents.]

And this defendant humbly submits and insists that this defendant is a holder in good faith of the said two bonds numbers 2070 and 2425, so as aforesaid, issued by the Milwaukee and St. Paul Railway Company, and took the same for value in the usual course of business, or lent and advanced their money on the faith thereof and without any knowledge or notice, actual or constructive, of any right, title, claim, or interest therein of the said complainant, and that this defendant is in law and

equity well entitled to hold the same and each of them as a security for the repayment of the said moneys so by them as aforesaid lent and advanced by this defendant to the said B. Starr Midgely, in priority or preference to the claim, right, or *in* interest, of the complain't, if any he has, in or to the said bonds or either of them.

This defendant further states, that it has no interest or claim whatever in or to said contract or obligation numbered 1947, alleged to be in the possession of the defendant, The National Shoe and Leather Bank, and it submits and insists that this action is not maintainable against this defendant and said The National Shoe and Leather Bank jointly.

THE TRADESMEN'S NATIONAL BANK,
By RICHARD BERRY, *President.*
SMITH & WOODWARD,
Solicitors for Defendant, The Tradesmen's National Bank.

STATE OF NEW YORK,
City and County of New York, ss:

On this 29th day of July, 1870, before me personally appeared
34 the above-named Richard Berry, and made oath that he is the president of the Tradesmen's National Bank, a defendant in this action; that he has read the foregoing answer, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

THO'S P. OKIE, JR.,
Notary Public, New York County.

(Endorsed:) U. S. circuit court. Charles B. Hotchkiss vs. The National Shoe & Leather Bank, &c. Answer of def't The Tradesmen's National Bank. Smith & Woodward, sol's f'r def't, Tradesmen's Bank. Filed July 20, 1871.

Answer of the National Shoe and Leather Bank.

This defendant now, and at all times hereafter, saving and reserving unto itself all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said amended bill of complaint contained, unto so much and such parts thereof as this defendant is advised, is or are material or necessary for it to make answer unto, this defendant, answering, saith:

That this defendant does not know and cannot set forth as to its belief or otherwise, whether the defendant, The Milwaukee and St. Paul Railway Company did, or not, on the sixth day of May, in the year of our Lord one thousand eight hundred and sixty-three, or at any other time, execute three certain obligations and contracts under the seal of said company, and attested by the signatures of the president and secretary thereof, of which the Exhibits Nos. 1, 2, and 3 annexed to said amended bill are alleged to be copies.

But this defendant admits, that the said railroad company exec'ted one certain obligation and contract, being a bond, No. 1947, of the tenor of, and in all respects similar to, so much of said Exhibit No. 1,
as represents a bond or obligation of said company, with cou-
35 pons attached thereto, and with the endorsement thereon, as appears in the said Exhibit, except that where the figures "$200,000" occur in folio 25, it should read "$2,000,000," and except also that the words and forms in folio 28, "date of transfer agent," "To whom transferred,'

"attest by transfer agent," are printed on the back of said bond with blank lines ruled underneath, and are not printed in connection with the coupons, as set forth in said amended bill of complaint. And this defendant denies that when the said bond or obligation was executed there was attached thereto in any form or manner a certificate like that forming part of Exhibit No. 1, designated by the No. 7668 for ten shares of scrip preferred stock, purporting to have been issued September 17, 1864, and which is set forth in said bill as "copy certificate attached," with a blank power of attorney printed on the back of said certificate, nor was any certificate whatever attached to said bond or obligation than that of J. Seymour and N. A. Cowdrey, trustees, at folios 29 and 30 of said amended bill of complaint was printed on the back of said bond.

This defendant, further answering says, that it does not know and cannot set forth as to its belief, or otherwise, whether by the charter or act of in'orporation of the said railway company, the said complainant, as the holder of the said obligations, and the said scrip alleged to have been attached thereto, was or not entitled to vote at elections for directors of said company; nor whether the said complainant was or not registered upon the books of said company as the holder of said obligations or contracts, and entitled or not to the benefits thereof; nor whether he still remains so registered or not; nor whether the complainant has or not ever in any way transferred the said scrip or the said obligations, or any or either of them, upon the books of said company, at their office in the city of New York or elsewhere, either in person or by attorney, or otherwise; nor whether he has or not ever surrendered or cancelled the said alleged certificates, or either of them; and this
35 defendant insists that the complainant be put to his proof thereof.

But this defendant denies that the said complainant was identified in said bond or obligation (No. 1947) as the holder thereof, and entitled to the benefits thereof. And this defendant admits that the said complainant has never surrendered or cancelled the said bond.

This defendant, further answering, says he does not know, and cannot set forth as to his belief or otherwise, whether on the 29th day of November, 1868, or at any other time, the complainant was or not in possession of the said bonds and the said several certificates alleged to have been thereto attached, or any or either of them, at Bridgeport, in the State of Connecticut, or elsewhere, nor whether the same, or any of them, were or not fraudulently and feloniously stolen and carried away from the complainant by any person to complainant unknown, and insists that complainant may be put to the proof thereof.

This defendant further answering, denies that said bond or obligation No. 1947 with the alleged certificate alleged to have been annexed thereto, and to form part thereof, constituted, in fact, but one instrument, and that the alleged several parts thereof were not capable of separation and division in such way as that the title to one of the alleged parts thereof could be transferred to one person, and the title to some other part thereof to another person, and denies that the holder of said bond or obligation No. 1947 could not get, and was not entitled to a performance of the conditions thereof against the said railway company without possession of the alleged certificate of scrip preferred stock alleged to have been annexed thereto, and says that the title to said bond or obligation could be passed by delivery without such alleged certificate of scrip preferred stock, and denies that upon the face of such obligation reference was made in the alleged several parts thereof to other parts of the same, so that the holder of one portion thereof was

37 chargeable with notice of the rights of the holder of the other alleged portion thereof, but as to whether the owner or holder of the alleged certificates of scrip of preferred stock could or not get the benefits thereof without the possession of the contracts or obligations to which they are alleged to have been annexed, or as to whether reference was or not made to the said bonds or obligations in said alleged certificates this defendant does not know, and cannot set forth as to his belief or otherwise, and leaves complainant to his proof thereof.

And this defendant further answering, says he does not know, and cannot set forth as to his belief or otherwise, whether after the alleged stealing and purloining of the contracts or obligations and alleged certificates in said bill mentioned, the person or persons by whom such purloining was effected, did or not detach from each of said obligations so much thereof as existed in the form of a certificate for scrip preferred stock, identifying the complainant as the holder thereof, and leaves the complainant to such proof thereof as he may be advised.

And this defendant further answering says that it does not know and cannot set forth as to its belief or otherwise whether it did or not obtain possession remotely from the person or persons who had been guilty of such alleged fraud and felony or from the agents or transferree of such person or persons without any transfer having been executed or delivered by the complainant to any person whomsoever and without the complainant's knowledge or consent became thereby the holder of said contract or obligation No. 1947, as remained after the alleged detaching of the alleged certificate of preferred stock thereto alleged to have been annexed. But this defendant admits that it received and is the holder of so much of one of said contracts or obligations No. 1947, as is alleged to have remained after the alleged detaching of the alleged certificate of preferred stock thereto alleged to have been attached. But defendant denies that such contract or obligation came into its possession by

38 means or in consequence of the alleged fraud and felony in relation thereto, and denies that it received the same in bad faith and denies that at the time of receiving the same it had notice from the contents or references thereof of the issuing and attachment as alleged of the said alleged fraudulent and felonious detaching of the same.

And defendant admits that it retains so much of said contract or obligation as was received by it, notwithstanding the complainant has made known to it his alleged rights thereto and his demand for the restitution of the same.

And this defendant admits that by reason of its possession of the aforesaid bond the complainant has been prevented from collecting the coupons attached to it and that defendant demanded from the said railway company payment of the coupons upon said bond as they matured, and that said railway company declined to make payment thereof and that said complainant has been unable to transfer said bond.

But this defendant does not know and cannot set forth as to its belief or otherwise whether the complainant did or not notify the Milwaukee & St. Paul Railway Company of the stealing or purloining of his property nor whether the said railway company has or not declined to recognise this defendant as the owner and holder of said bond or as being interested therein; nor whether the complainant having as alleged been feloniously and fraudulently deprived of the alleged scrip alleged to have been attached to and to form part of said contract or obligation, has or not been unable to produce to the said corporation evidence of the right or title of the complainant thereto, nor whether the complainant has been or not or is it or not now impeded and prevented from exercising the right

of conversion given by said alleged contracts and for exercising the right alleged to be secured by said alleged certificates of surrendering said obligations and receiving certificates for full-paid preferred stock in lieu thereof, and insist that complainant be put to his proof thereof. But defendant admits that complainant could not convert the said bond into stock of said company without a surrender thereof to said company.

39 And this defendant denies that it has become impossible for the said railway company to determine who is actually and truly entitled to the benefit of said contract or obligation No. 1947, and it denies that complainant is likely to be impleaded by this defendant in a suit for the purpose of determining the title to and value of said contract or obligation, and it denies that so much and such alleged part of said contract as has come to the possession of this defendant is not of itself marketable, and denies that in an action at law for the recovery or conversion of the same the complainant if entitled thereto might not be able by proof to establish any recognized measure of damages for the alleged taking and detention of the same, and it admits that the continued detention thereof hinders and obstructs complainant in collecting from said railway company any moneys on account of the same and hinders and obstructs him in the enjoyment of his alleged rights as the alleged true and lawful holder of each and every part of said contract or obligation, and denies that such detention is the cause of great and irreparable damage to him for which he has no adequate remedy at law.

This defendant, further answering, avers that it became and is the owner and holder of the bond or obligation hereinbefore mentioned, (No. 1947,) and received the same in the regular and usual course of its business as a bank, in the following manner: That on or about the 23d day of February, 1869, an application was made to this defendant on behalf of the firm of Waterhouse, Midgely & Co., who were dealers, and kept an account with said defendant, for a discount of a certain promissory note of the said firm for the sum of eight hundred dollars, with the said bond or obligation No. 1947 as collateral security thereto. That said defendant thereupon, upon the faith of the security of the said bond, did then and there discount the said note, and paid over the proceeds thereof to said firm of Waterhouse, Midgely & Co., and received said bond as collateral security therefor. That this defendant re-

40 ceived the same in good faith, without any knowledge or notice whatever of complainant's alleged title or claim thereto, or of anything affecting the title of the parties from whom it received the same as aforesaid. And this defendant avers that there was no scrip preferred stock attached thereto, and no evidence upon said bond of there having been any thereto attached. That the said note was not paid, but has been from time to time renewed by said firm of Waterhouse, Midgely & Co., with said bond remaining in the hands of this defendant as security therefor; that upon the last renewal thereof the said Waterhouse, Midgely & Co. executed and delivered to this defendant their certain promissory note for the said sum of eight hundred dollars, bearing date the fifth day of October, 1869, of the following tenor and effect, to wit, the said makers thereby promise to pay, two months after date thereof, at the banking-house of this defendant, the sum of eight hundred dollars for value received, having deposited as collateral security for the payment thereof the aforesaid bond No. 1947, with full power to sell said security on the non-payment thereof, without notice to said makers, which will more fully and at length appear on the production of the same, to which this defendant now craves leave to refer. That the same

has not been paid, nor any part thereof; and the said note and said security are now and continue in the possession of this defendant as aforesaid, without any knowledge or notice, actual or constructive, of any right, title, claim, or interest therein of the said complainant; and this defendant insists that it is in law and equity entitled to hold the said bond as security for the payment of the said note and the moneys due thereon as aforesaid to this defendant.

And this defendant, further answering, avers that it is a stranger to the matters contained in so much and such parts of said bill as relates to the defendant, "The Tradesmen's National Bank," and to the bonds or obligations and contracts severally set forth in said bill as Exhibits Nos. 2 and 3, including the bonds Nos. 2070 and 2425, and is
41 wholly ignorant of all such matters, and of the statements and charges in said bill relating thereto, and cannot form any belief concerning the same; and this defendant submits to this honorable court that this action cannot be maintained against this defendant and the said "The Tradesmen's National Bank" jointly, and this defendant hopes it shall have the same benefit of this defence as if it had demurred to the said complainant's bill.

And this defendant further submits to this honorable court that all and every of the matter in the said complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and this defendant hopes it shall have the same benefit of this defence as if it had demurred to said complainant's bill; and this defendant denies that the said complainant is entitled to the relief as prayed for in his said bill of complaint, or any relief whatsoever, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

BEACH & BEMAN,
Solicitors for the Defendant, The Nat. Shoe & Leather Bank, of the City of New York.

H. N. BEACH,
Of Counsel for Nat. Shoe and Leather Bank.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John M. Crane, being duly sworn, deposes and says, that he is the cashier of "The National Shoe and Leather Bank of the City of New York," a defendant in this cause; that he has read the foregoing answer to the complainant's amended bill of complaint, and knows the contents thereof, and that the matters and things contained and
42 set forth herein, so far as they relate to said defendant are true, and so far as they relate to the acts and deeds of other persons, this deponent believes it to be true.

J. M. CRANE.

Subscribed and sworn to before me this 10th day of February, 1871.
R. E. STILWELL,
U. S. Com'r.

(Endorsed:) U. S. circuit court. Cha's B. Hotchkiss ag't The National Shoe & Leather Bank of the city of New York, impleaded, &c. Answer to amended bill of compl't. Beach & Beman, att'ys. Filed Feb'y 10, 1871.

U. S. circuit court for the southern district of New York.

The replication of Charles B. Hotchkiss, complainant, to the answers of the Tradesmen's National Bank, and the National Shoe and Leather Bank, defendants, to the complainant's bill of complaint.

This repliant, saving and reserving unto himself all and all manner and advantage of exception to the manifold insufficiences of the said answers, for replication thereunto, saith:

That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants *is* uncertain, untrue, and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

C. W. BANGS,
Compl't and Solicitor.
F. N. BANGS,
Of Counsel for Plaintiff.

(Endorsed:) U. S. circuit court. Cha's B. Hotchkiss ag't The Tradesmen's National Bank. Replication. C. W. Bangs, compl'ts sol'r. Filed Sep't 27, 1870.

43 U. S. circuit court.

CHARLES B. HOTCHKISS
vs.
THE SHOE & LEATHER NATIONAL BANK ET AL.

GENTLEMEN: Please to take notice that the plaintiff in this case, desires to take the testimony therein orally, and that the examination of the witnesses on the part of the plaintiff will commence on the 2d day of December, 1870, at 10 o'c. noon, before Rich'd E. Stilwell, esq., one of the standing examiners of this court, at his office, No. 41 Chambers street, in the city of New York, and will be continued at such times and places as the said examiner shall from time to time adjourn to; and you will further please to take notice that on the said 2nd day of December, 1870, at 12 o'clock noon, before the said examiner, the said defendants will be severally and respectively required to produce the several obligations, contracts, or securities for the payment of money mentioned in the bill of complaint in this cause, and that in the default of such production thereof, parole evidence of the contents of the same, or of such of the same as the defendants shall fail to produce will be given.

Dated New York, November 19, 1870.

44 Yours, &c.,

C. W. BANGS,
Sol'r for Plaintiff.

To BEACH & BEAMAN, Esq'rs,
Solicitors for the Shoe & Leather National Bank.
To SMITH & WOODWARD, Esq'rs,
Solicitors for the Defendant, The Tradesmen's National Bank.

(Endorsed:) Hotchkiss vs. Shoe & Leather Bank, &c. No examination of witnesses. C. W. Bangs, solicitor.

Due service of a copy of the within notice is hereby admitted.

BEACH & BEAMAN,
Solicitors for Shoe & Leather N. Bank.

NEW YORK, *November*, 1870.

SMITH & WOODWARD,
Solicitors for Tradesmen's N. Bank.

NEW YORK, *November* 22, 1870.

Exhibit No. 1. R. E. S., examiner, &c.

45 Circuit court of the U. S. for the southern district of New York.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE AND LEATHER BANK ET AL.

Testimony taken for final hearing on the part of the complainant, under the 67th rule of the Supreme Court of the United States as amended.

FRIDAY, *December 2d*, 1870.

Present, F. N. Bangs, esq., counsel for complainant, John S. Woodward, esq., counsel for Tradesmen's Bank; Henry D. Beman, esq., counsel for Shoe & L. Bank.

Counsel for complainant produces notice of examination of witnesses, and notice to produce papers, with an admission of service, marked Ex. 1.

Counsel for claimant calls on the counsel for the defendants respectively to produce the papers referred to in that notice.

46 Counsel for Tradesmen's Bank declines to produce such papers at this stage of the proceedings.

JOHN S. WOODWARD, called and sworn as a witness on the part of the complainant, deposes and says:

Q. Have you here in your possession any papers purporting to be obligations of the Milwaukie and St. Paul Railway Company?

A. As counsel of the Tradesmen's Bank, I have.

Q. Did you receive them from the Tradesmen's Bank?

A. I received them from the officers of that bank, one from the president, and one from the cashier. I received one this morning, and one months ago.

Q. Will you please produce them?

A. I will produce them. I produce one $1,000 bond, No. 2425, in blue ink, and one $1,000, No. 2070, in red ink. Bond No. 2425
47 has attached 46 coupons, including the coupons for January and July, 1870, and all subsequently falling due. Copies of the bonds to be furnished. Bond No. 2070 has attached 46 coupons, including the coupons for January and July, 1870, and all subsequent dates. Each coupon on said bond is for $35.

JNO. S. WOODWARD.

Subscribed and sworn to before me, this 2d Dec., 1870.

R. E. STILWELL,
Examiner, &c.

Pursuant to the notice hereto annexed, counsel for complainant, calls upon the counsel for the National Shoe and Leather Bank to produce the papers therein referred to.

Counsel for said bank says that he does not produce it, and proceeds to state his reason, which is objected to; that the bank and the counsel have neither of them a bond such as is described in the bill of complaint, referred to in the notice.

HENRY D. BEMAN, called and sworn on behalf of complainant, deposes and says: I am one of the solicitors and counsel for the
48 Shoe and Leather Bank, the defendants in this suit. I have read the bill of complaint. I have no original obligation in my possession of the Milwaukie and St. Paul Railway Company. I have a copy at my office of a bond or obligation of that company. The copy was taken from the original bond, I believe. I have never had the original, nor never seen it. I don't know that I can state all the difference between that copy and the form of obligation set forth in the bill. I can state some of them.

HENRY D. BEMAN.

Subscribed and sworn to before me this 2d December, 1870.

R. E. STILWELL,
Examiner, &c.

CHARLES B. HOTCHKISS, sworn on the part of the complainant, deposes and says: I reside at Bridgeport, Connecticut. I am president of the Pequannock National Bank.

Q. Look at the papers now produced by the counsel for the Tradesmens' National Bank, and state if you recognize them.

49 A. I do from their numbers. I have seen an additional bond, No. 1947, in the possession of Mr. Stout, president of the National Shoe & Leather Bank, and Mr. Crane, cashier of that bank.

Q. When was the first time you ever saw those three bonds, Nos. 2425, 2070, 1947?

A. I think it was in September or October, 1864.

Q. Did they come into your possession then, and if so, how, and how long did they remain in your possession?

A. They were purchased for me by Mr. Townsend, of the Townsend Savings Bank, New Haven, from the Milwaukie & St. Pauls Railway Company; or from Mr. Sage, an officer of said company. I saw them in Mr. Townsend's possession at the time of the purchase, and left them with him until June, 1866. I had been living in Europe in the mean time. In June, 1866, I took them in my own custody, and kept them until the 30th November, 1868.

Q. Are the two bonds Nos. 2425 and 2070, as just produced by the Tradesmen's Bank, the identical papers which were then in your
50 possession, or has something been added to or taken from them.

A. They are the identical papers. In November, 1868, there were further coupons, and one additional paper annexed to each.

(The Shoe and Leather Bank now produces an obligation of the Milwaukie & St. Paul Railway Co., No. 1947—copy to be furnished.)

Witness says: I recognize this as one of the papers purchased by Mr. Townsend, and which remained in my possession until November 30, 1868. It then had three coupons and an additional paper attached to it, which are not now attached. I never detached those papers or coupons from either of those bonds, No. 2425, 2070, 1947. The papers,

same, to wh[illegible]

No. 2425, 2070, and 1947, with the papers attached, and all the coupons then on them, were taken from the money-safe. They were in a tin box. This safe was inside the vault of the Pequannock Bank. The box contained in the neighborhood of $100,000 in value, in securities belonging to myself, with the exception of $2,000. I last saw this box about
51 November 27, 1868. It then contained these securities. I have not seen the box since. I have never sold or otherwise disposed of those bonds, nor consented to their being taken away. On the 30th November, 1868, I looked for the box and could not find it. Some of the contents of the box have come into my possession. I got $22,000 through the agency of the police. I got them directly from the police. I do not know, except from hearsay, how they got them. They were handed to me by Captain Speight, of the New York police. The papers, exclusive of coupons, above mentioned as having been attached to the obligations No. 2425, 2070, and 1947, were all of the same tenor. They have never come back into my possession. I do not know where they are. The bill sets forth the form of that scrip so attached; except that each scrip sets forth the number of the bond to which it was attached. I never indorsed that scrip, nor never signed, nor filled up the transfer endorsement. I never signed any transfer of these obligations on the books of the company. My name was on the scrip attached to the obligations.

Adjourned to the 9th inst., at 10½ a. m.

FRIDAY, *December 9th*, 1870.

52 Present—Counsel as before.

WILLIAM R. HIGBIE, called and sworn as a witness on the part of the complainant, deposes and says:

In November, 1868, I was cashier of the Pequonnock National Bank, of Bridgeport. I knew Mr. Hotchkiss. He was then vice-president of that bank. I was cashier. Mr. Hotchkiss had a tin-box, which was placed in the vault of that bank for safe keeping. The burgler-proof safe was placed in the end of the vault. This box was on a shelf in this safe, with another box belonging to the president of the bank. This box of Mr. Hotchkiss was in the centre of the shelf, the box of the president on one side of it, and on the other side was placed, when we closed the safe at night, a little tray, upon which was kept fractional currency, and which was usually called a "specie tray." All of the employees had access to the contents of the safe while the vault was open. The vault was open between 8 and 9 o'clock a. m., and kept open until we closed—sometimes 3; sometimes 4 o'clock. On Saturdays we closed at 1 o'clock. I supposed it to have been there on Saturday.
53 I do not know positively whether it was there or not the Saturday preceding the Monday it was missed. I missed it upon this Monday in November—the date I don't remember. This specie tray I placed in the vault myself, on the preceding business day, and on this Monday, upon placing the tray in the safe, I missed this box. It was soon after 3 o'clock, about the close of business. I know nothing of the contents of the box, as I never saw the inside of it, to my knowledge. I couldn't state positively when I last saw the box. Usually, in putting back the specie tray, I had to turn it a little on account of the position of Mr. Hotchkiss' box, and on this Monday I found that I could put it in without turning it, and this called my attention to the fact that Mr. Hotchkiss' box was not there. I immediately called the attention of the teller

to the fact. I said "Henry, has Mr. Hotchkiss taken away his box?" His answer was, "Not that I know of," or something of that kind. I then said, "He must have done so, for it is not here in the usual place." I have never seen the box since.

Cross-examined by counsel of the Nat. Shoe & Leather Bank:

54 The names of the employees of the bank at that time were Henry S. Sterling, teller and book-keeper, and a boy named Harry Wales. Those were the *the* only employees except myself. Both of them are now living in Bridgeport. They are not in the employ of the bank. I think the' left the bank six months or a year after that. They were not discharged. The access to the vault was from within the counter. Persons could approach the vault from the hallway outside, without any obstruction. The shelf on which the box was placed was the length of the safe inside, about 3 or 4 feet. I could not give the exact size of the president's box. It was a foot and a half long; I should think about twelve inches wide; perhaps wider. It was usually placed lengthwise on the shelf. Mr. Hotchkiss' box was a trifle smaller. That was placed lengthwise. The tray was about a foot wide, or a little over; about the same length. I stated on my direct examination the only reason why I missed Mr. Hotchkiss' box on that occasion.

Redirect:

There was a stranger in the bank on Monday at noon, when I was alone in the bank. He came in to the counter and asked me if the
55 bank would loan some money on Government bonds; that a lady wished to borrow $2,000 to pay a mortgage that was coming due the next day. I told him that to-morrow was discount day, and he could make his application. He asked me if I thought it would be done. I answered him that I could not say, but presumed it might be, or something to that effect. He said he would bring the lady in in the morning. I never saw that party again. No such loan was ever applied for by a lady or any one else. Very often people that we were not acquainted with came in to make applications for loans. The application is generally followed up until it is either accepted or refused. I don't remember any similar case to this above mentioned, but there may have been.

Cross-examined by counsel on part of Tradesman's Bank:

I mentioned the appearance of the stranger of whom I have spoken as making the application for a loan on Governments the same evening to Mr. Hotchkiss. He asked me if any stranger had been there on that day.

W. R. HIGBY.

Subscribed and sworn to before me this 9th December, 1870.

R. E. STILLWELL,
Examiner, &c.

56 CHARLES B. HOTCHKISS, the plaintiff, recalled:

Q. Were you right in saying that the scrip was numbered with the same numbers as the bonds?

A. I don't remember the numbers on the scrip.

Q. Look at the paper produced and shown you, and state if that is the skeleton form of the scrip and transfer endorsed thereon.

A. It is.

(The paper produced is hereto annexed:)

Certificate for scrip preferred stock.—Issued , 187 .

No. .] [Ten shares.

This is to certify that of is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "Scrip preferred stock," in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage-bond ( ) No. of the company, and all unmatured coupons thereon at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said is entitled to receive ten shares of said full paid preferred stock.

This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate, and the stock represented hereby, is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company and by the registrar of transfers.

In witness whereof the company have caused this certificate to be signed by the president.

——— ———, *President.*

——— ———,
Transfer Agent.

Countersigned by—

——— ———, *Registrar of Transfers.*

Shares $100 each, on which $1 per share has been paid.

(Printed on the back:)

Know all men by these presents that for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto , shares of the scrip-stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over, all or any part of the said scrip-stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In witness whereof have hereunto set hand this day of , one thousand eight hundred and seventy- .

Signed and delivered in presence of .

Q. Did you make any publication concerning the loss of these securities? and if so, state where the publication was made, not what the publication was.

A. I put a notice in the Herald, Times, and Tribune the day after the robbery.

Q. What communication did you make to the R. R. Co.?

A. I notified them of the robbery or loss of the bonds.

57 Q. Have you communicated with the Tradesmen's Bank on the subject, and if so, state the particulars?

A. I made a formal demand for the bonds, before bringing this suit. I made the same demand of the Shoe & Leather Bank.

Cross-examined by counsel for Tradesmen's Bank:

I made the demand of the Tradesmen's Bank at their banking-house in this city, of the cashier. I can't give the date exactly—two or three weeks before this suit was commenced. I should think it was within a month before. I couldn't say that I made any other formal demand of that bank for the bonds. I demanded these two bonds that were presented here. I don't remember the numbers of the two bonds which I demanded from the Tradesmen's National Bank without reference to memorandum. I did not make a written demand of that bank. I did not see the bonds on the day on which I made that demand. The coupons which I testified were attached to the bonds in November, 1868, were printed on the same paper with the respective bonds.

58 The scrip-certificates which I testified to as attached or annexed to the bonds in November, 1868, were printed on separate pieces of paper from the bonds, and were attached to those bonds by a pin. A week previous to the robbery, or loss of which I have spoken, I examined personally the bonds in question. I recollect that when I so examined the bonds, the scrip and coupons mentioned by me were then attached, as I have stated, to said bonds respectively.

Redirect:

Bonds Nos. 2425 and 2070 are now before me. I see the pin holes on the left hand margin of each. I see nine pin holes on the left hand margin of No. 2070. On the left hand margin of No. 2425 I see eight pin holes and a large tear. The first I heard of the Tradesman's Bank having either of the bonds, was when the railroad co. notified me that the coupons had been presented for payment. I went immediately to the Tradesman's Bank. I asked the cashier if they had two bonds of the Milwaukee and St. Paul Railroad Company as collateral for a loan, describing a certain party, and he said he hadn't got them. He

59 then asked me for the numbers. I gave him the numbers and he said he had them, and showed them to me. On the left hand corner of bond No. 2070 I see additional pin holes. They are in the part where the ornamental border is printed, and are hardly visible on the face of the bond, but are easily visible on the back. There are also three additional pin holes on the right hand margin of No. 2425. My impression is that the time of this interview was soon after the first of January, 1870.

Cross-examination suspended for the present:

Adjourned to Thursday, the 15th inst., at the office of the Milwaukee & St. Paul R. R. Co., No. 25 William st.

THURSDAY, *December* 15*th*, 1870.

Present, counsel as before.
Adjourned to the 21st, 1870.

WEDNESDAY, *December* 21, 1870.

Present, counsel as before.

60 Plaintiff's counsel reads in evidence section 33 of chapter 79 of the Revised Statutes of Wisconsin, edition of 1858, page 510, marked Exh. 4 A.

RUSSELL SAGE, called and sworn as a witness on the part of the plaintiff, deposes and says as follows: I am vice-president of the Milwaukee and St. Paul Railway Company, and have been vice-president of the company for the past three years, and the year previous was president of the company, and have been president and vice-president since organization, except one year. The Milwaukee and St. Paul Railway Company owns the road from Milwaukee to La Crosse, in the State of Wisconsin, and also from Milwaukee to Prairie-due Chien, and from Prairie-due-Chien to St. Paul, in Minnesota. The former owners of that property were various Wisconsin & Minnesota railroad companies. So much of the roads as were in Wisconsin were sold under foreclosures of mortgages executed by former owners. I remember the purchases made by William Wallace Pratt and William H. White. That was the first purchase. They bought the La Crosse and Milwaukee road running from Portage City to La Crosse, known as the western di-
61 vision La Crosse and Milwaukee Railroad. I produce a copy of the articles of association adopted by Mr. Pratt and Mr. White, a printed copy of the original filed in the office of the secretary of state of Wisconsin. (Plaintiff's counsel offers the copy in evidence.)

(It is marked Exhibit 5. Defendant's counsel objects to the competency and relevancy of the articles of association as evidence, but does not object to the sufficiency of proof of the copy produced, and agrees they shall have the same force as the original would have if produced.)

Those articles of association mention a mortgage and scrip stock to be issued. I know how the company conducts its operations in issuing bonds and scrip under that mortgage; when the bonds and scrip were issued there was a record made of them in one of the books of the company in every instance. The book now produced and shown me is the transfer-book of the company showing the original issue of the scrip preferred stock and also the transfers.

Plaintiff counsel here shows to the witness the bonds in controversy, numbers, 2070, 2425, and 1947.

Witness says, at the original issue of these bonds, there was
62 annexed to them scrip preferred stock. The bond numbered 1947 was originally issued by the company to me. At that time there was annexed to it a certificate of scrip preferred stock which has since been surrendered to the company, and which I now produce marked Exhibit 6. I transferred bond No. 1947 by transfer No. 146 on the books of the company, which is now produced and shown me marked Exhibit 7. At the time of that transfer the original certificate No. 1947, Exhibit 6, was surrendered to the company, and a new certificate, number 7086, was issued in lieu of it. The next transfer on the books was transfer No. 253, now produced and shown me, marked Exhibit 8. On that transfer being made, certificate No. 7086 was surrendered, and a new certificate, No 7668, was issued to Charles B. Hotchkiss, in his name, in lieu of it. That certificate, No. 7668, is now outstanding and has not been surrendered.

The company has always kept and now keeps a stock and bond ledger, containing accounts of the scrip preferred stock. The accounts are kept in the form of debit and credit accounts with the holders of the stock. The holder is credited with the number of shares mentioned in the certificate and is charged with the number of shares transferred by him. There was an account kept with me on that ledger, I was credited with the ten shares mentioned in certificate No. 1947. When I trans-
63 ferred that certificate I was charged with the ten shares, and those ten shares were placed to the credit of F. P. James & Co.

The stock-ledger is used at elections by the inspectors as a register of voters, each person being allowed to vote on the number of shares standing to his credit.

Bond No. 2070 was originally issued to F. P. James & Co. There was a certificate of scrip preferred stock attached to it, 2070. I now produce that certificate cancelled, (Exh. 9.) When transfer No. 253 (Exhibit 8) was made, that certificate, No. 2070, was surrendered and cancelled, and a new certificate, No. 7667, was issued to and in the name of Charles B. Hotchkiss, which is still outstanding.

When bond No. 2070, with the accompanying scrip, was issued to F. P. James & Co., they were credited with ten shares on the stock-ledger. When transfer No. 253 was made, they were charged with forty shares, and an account was opened on the ledger with Charles B. Hotchkiss, and he was credited with forty shares.

Bond No. 2425 was originally issued to Alfred Noxon, with a scrip certificate No. 2425 attached; I now produce marked Exhibit 10. Mr. Noxon executed on the books of the company transfer No. 254, now produced and shown me, being Exhibit No. 11. At that time
64 certificate No. 2425 was surrendered and cancelled, and a new certificate, No. 7669, was issued to and in the name of Charles B. Hotchkiss. That certificate is still outstanding. When bond No. 2425 was issued to Mr. Noxon he was credited on the stock-ledger with ten shares. When transfer No. 254 was made he was charged and Mr. Hotchkiss was credited with ten shares.

I produce the account of Charles B. Hotchkiss on the stock-ledger, being Exhibit 12. Plaintiff's counsel offers Exhibit 12 in evidence. Def'ts counsel objects that the evidence is incompetent, not being an original entry, and is also irrelevant.

Witness testifies that these entries are used at elections as evidence of the right to vote.

I do not find on the books of the company any transfer by Mr. Hotchkiss of certificates No. 7667, 7668, or 7669. The company keeps a book entitled "Certificates cancelled and scrip preferred stock," showing the persons to whom the stock was issued, when delivered, number of certificate, number of shares, date of certificate, by whom surrendered, when surrendered, number of new certificate, number of shares, total shares, and date of certificate.

Witness produces the book referred to by him contain'g the
65 following entries, marked Exhibit 13.

Q. This scrip contains these words: "Upon the surrender of this certifiate and mortgage bond number of the company, and all unmatured coupons thereon, at any time," &c., "the said is entitled," &c. Is that a priviledge sometimes exercised by holders of the scrip.

A. It has been exercised.

Cross-examined by counsel for Tradesmen's Bank:

When these bonds were originally issued there was annexed to each a certificate of preferred stock. That annexation was made by attaching it to the bond—on the inside of the bond. They were sometimes pinned, and sometimes put on with mucilage, gummed on, but never issued without its being attached to it. In the case of these three bonds referred to—Nos. 1947, 2070, 2425—I do not remember how they were attached; whether they were pinned on or gummed on with mucilage, or any other adhesive substance; but I know that no bond has ever been issued except with that scrip attached to it in some way or other. In no

instance was the scrip printed on the same paper as the bond. The coupons attached to the bonds were printed on the same paper. When the transfers were made, as I have spoken of of the bonds in question,
if the scrip had been attached by gum, I do not know how they
66 were detached upon the transfer on the issuing of new scrip.
They were attached by a corner simply—just a little gum on the corner and torn off, just taken right off. If they were pinned on, then they were unpinned.

Cross-examined by counsel for Shoe and Leather Bank:

In some cases this certificate and bond has been surrendered and stock taken. There are cases where this has not been done. There is a large amount of these outstanding. They all have that privilege; it is a privilege that they can exercise or not, as they choose. The holder of the bond has what we call a convertible privilege; if the stock is higher than the value of the bond, they have a right to come in and claim it within 10 days after the dividend is paid on the stock.

Q. Then the owner of a bond, under the terms of that mortgage, has a right to dissever this certificate from the bond?

A. No, sir; he must surrender them together.

Q. He has a right to dissever if he does not wish to avail himself of that privilege?

A. The bond and this preferred scrip is one and inseparable; to exercise his privilege he must bring the two together.

Q. But suppose he does not want to exercise it, he can dissever, cannot he?

A. He has a right to do what he pleases with his own property, of course.

67 Redirect examination:

Q. You say that the owner of this scrip has a right to surrender it, and take stock instead?

A. Yes.

Q. Now if Mr. Hotchkiss should come here with the scrip now held by him and not transferred, & ask for full paid preferred stock in place of it, and could not produce the bonds, and the best account that he could give of them was that they were in the hands of a thief or had been stolen, you would not let him have the preferred stock, would you?

A. No, sir; nor I would not give him preferred stock if the bonds were in the hands of John Jacob Astor.

Q. Then if the bonds are separated from the scrip, his rights as holder of the scrip are seriously imperilled, are they not?

A. Yes, sir.

RUSSELL SAGE.

Subscribed and sworn to before me, this 16th day of February, 1871.

R. E. STILWELL,
Examiner, &c.

FRIDAY, *February* 17, 1871.

Present, counsel as before.

CHARLES B. HOTCHKISS further cross-examined by Mr. Beach,
68 for defendant, Shoe & Leather Bank of the city of New York.

Q. You state that there was a certificate attached to bond No. 1947, besides the coupons. In what way was that certificate attached?

A. It was pinned and folded in—inside of the bond. It was not engraved on the same sheet as the coupons are.

Q. When did you last see that bond, and where?

A. Two or three days previous to the robbery; I could not say exactly, but within that time. I think the robbery was committed on the 30th of November, 1868.

Q. For what purpose did you then see that bond?

A. For the purpose of examination; that is, the bonds were in my package of coupon bonds. I took them out to put them by themselves in an envelope.

Q. Did you then examine each one of these?

A. I can't say that I examined that particular bond, but examined the package generally.

69 Q. How then can you swear that you last saw that particular bond at the time you have mentioned?

A. I had five of them; I never had but five; and those were five of them.

Q. Did you open and unfold each one of those five bonds at that time?

A. I don't think I did unfold all of them.

Q. Will you swear that you unfolded bond No. 1947?

A. I could not swear that I unfolded it, but will swear that it was there.

Q. Will you then swear that the certificate to which you have referred was then attached to that bond?

A. I could not, but will swear that it was on at the time I cut the last coupon off.

Q. At what time did you cut the last coupon off?

A. About the 1st of July previous.

Q. Had you examined the bond after the 1st of July, and before the time when you say you last saw it?

A. The bonds that were in the envelope were with other bonds that I was using.

Q. Do you recollect distinctly seeing this bond No. 1947 during that interval?

A. I could not say that I took out that particular bond, but I saw the package.

Q. You speak of a package. Do you mean an envelope that contained those five bonds?

70 A. These 5 bonds were placed in a package by themselves in a large envelope, sometimes at the back and sometimes in the front of it. There were other bonds in the package with them.

Q. Do you recollect on any particular occasion when you saw this bond in the interval?

A. I saw them always when I had occasion to use the envelope.

Q. Did you always count them to see whether all the 5 bonds were there?

A. I run my eye over them, as I naturally would on opening the envelope.

Q. Well, how did you run your eye over them?

A. By seeing that the number were there, and the bonds were those and other securities.

Q. Could you see that the number was there without counting them?

A. I can count five distinct objects without enumeration.

Q. Could you at the same time see how many other securities there were in the envelope without counting them?

A. I could if there were not more than five, and if they were of different color, as these bonds were.

Q. At the last time you say you saw this bond, how many other bonds were there in the same envelope?

A. The last or next to the last time that I saw the bonds they
71 were placed in a package by themselves. They were taken out of this envelope and placed with other securities in another envelope; I can't say that those securities were bonds.

Q. State how many bonds there were in the envelope from which they were taken, and placed in an envelope by themselves?

A. I can't give the exact number.

Q. Then you have not that faculty of telling the number of bonds by running your eye over them without counting them, have you?

A. I have when they don't exceed five in number, and of a different color.

Q. Were there any bonds in that envelope of a different color than this bond No. 1947. If so, how many were there, and of what color?

A. There were some five or six different kind of bonds. They were of different shades, the different kinds of bonds, and were easily distinguished from their outside appearance. There were three Connecticut State bonds, the lettering of which I think is red. There were 10 school bonds issued by the city of Marshal, Michigan. There were 4 or 5 different kinds of Government bonds. There were three only. The paper was all substantially one color. They were not printed on colored paper.

Q. Did you ever read that certificate?

A. I did.

72 Q. Do you remember its contents so that you could repeat it?

A. Not particularly. I could not repeat it.

Q. Was the certificate set out in your original bill, a copy of that which you say was attached to bond No. 1947?

A. As near as I can recollect.

Q. Did you read that certificate as set forth in your original bill at or before the time you swore to it?

A. Yes, sir.

Q. And can you now swear that that was a copy of the certificate attached to bond No. 1947 at the time of your alleged loss?

A. As near as I can recollect.

Q. Were you present at the office of the company at the time the scrip attached to bond No. 1947 was transferred to you?

A. No, sir; they were purchased by another party for me, and the certificate made to my order.

Q. Was it made to your order as appeared by the face of the certificate when the bond first came into your possession?

A. Yes, sir.

Q. Who purchased that bond for you, and when?

A. Mr. Townsend, of the Townsend's Savings Bank, New Haven; I should think in the fall of 1864 or 1865; I can't tell positively.

Q. How many interest-coupons had you cut off before the bond was lost?

73 A. I can't tell, but all that had become due.

Q. Had any one cut them off after you had purchased them but yourself?

A. Mr. Townsend cut off two or three, and I cut off the rest.

Q. How long did Mr. Townsend hold those bonds for you?

A. From one to two years. He held them until I came back. I came home in June, 1866.

Q. Can you not state more definitely the time that Mr. Townsend held them for you, than you have stated?

A. I think he held them from September, 1864, to June or July, 1866.

Q. When you swear you never saw any transfer of this bond No. 1947 do you mean that you never signed any power of attorney which you say formed a part of that certificate?

A. I do.

Q. You spoke about selling or exchanging those bonds. Did you never negotiate a sale of those bonds or exchange them for others?

A. No, sir.

CHARLES B. HOTCHKISS.

Subscribed and sworn to before me this 17th February, 1871.

R. E. STILWELL,
Examiner, &c.

74 (Endorsed:) Circuit court U. S., southern dist. N. Y. Charles B. Hotchkiss *vs.* The National Shoe & Leather Bank *et al.* Complainant's proofs. Filed March 17, 1871.

75 EXHIBIT 12.—R. E. S., *Examiner.*

UNITED STATES OF AMERICA.

Sixty coupons attached. Last six months' interest, $35, payable with bond.

1,000.] STATE OF WISCONSIN. [1,000.

Milwaukee and St. Paul Railway Company.

Number 1947.] U. S. Coat of Arms. [Number 1947.

Know all men by these presents, that the Milwaukee and St. Paul Railway Company are indebted to Isaac Seymour, Horace Galpen, William Gould, Fred. P. James, D. M. Hughes, George Smith, and Francis Vose, citizens of the State of New York, or bearer, in the sum of one thousand dollars for the purchase-money of their entire corporate property, which sum said company promise to pay to the bearer hereof on the first day of January, A. D. 1893, at the office or agency of the company in the city of New York, with interest thereon from the first day of July, A. D. 1863, at the rate of seven per centum per annum, payable semi-annually at its office or agency in the city of New York, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons, as they severally become due; and, in case of non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable.

The said company also agree to make the scrip preferred stock attached to this bond full-paid stock at any time within ten days after any dividend shall have been declared and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond and the unmatured interest-warrants. This bond is one of a series of bonds amounting to $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then this issue of bonds may be increased $2,000,000; and, if the company acquire the Milwaukee and Western Railroad and extend

it from Columbus to Portage, then this issue may be increased $2,000,000, and if the company acquire the Milwaukee and Horicon Railroad this issue of bonds may be increased $400,000.

All of which bonds are executed and delivered in conformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors; and the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises and immunities, dated May 6th, A. D. 1863, and also to the benefits to be derived from a sinking-fund established by and in said mortgage or deed of trust of all such sums of money as are received from the sales of lands donated or granted to this company by the United States or by the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon, and duly signed by both of said trustees, or their or his successor, successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage.

In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this 6 day of May, A. D. 1863.

[L. S.] (Signed) D. M. HUGHES, *President.*
(Signed) RUSSELL SAGE, JR., *Secretary.*

(Written across the face:) This is a copy and not an original.

$35.] COUPON NO. 60. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1892, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON NO. 54. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1889, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON NO. 48. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1886, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON NO. 42. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1883, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON NO. 36. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1880, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 30. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1877, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 24. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1874, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 18. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1871, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 59. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1892, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 53. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1889, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 47. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1886, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 41. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1883, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 35. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1880, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 29. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1877, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 23. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1874, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON. No. 17. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1871, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 58. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1891, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 52. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1888, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 46. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1885, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 40. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1882, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 34. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1879, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 28. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1876, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 22. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1873, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 16. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1870, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 57. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1891, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 51. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1888, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 45. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1885, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 39. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1882, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 33. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1879, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 27. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1876, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 21. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1873, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 56. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars on the first day of July, 1890, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 50. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1887, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 44. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1884, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 38. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty five dollars on the first day of July, 1881, in the city of New York, for interest on bond No. .

, *Agent.*

$35.] COUPON No. 32. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1878, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 26. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1875, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 20. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1872, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 55. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1890, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 49. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1887, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 43. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1884, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 37. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1881, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 31. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1878, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 25. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1875, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 19. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1872, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

N. B.—Each of the coupons is numbered 1947, & signed "H. E. Glasford," agent.

76 (On the back:) Copy. $1,000 bond, No. 1947. First mortgage. Milwaukee & St. Paul Railway Company. 7 per cent. convertible. Interest, January & July. Due, 1893.

This is to certify that this bond is included in a first mortgage of the entire corporate property, real and personal, rights, franchises, and immunities of the Milwaukee and St. Paul Railway Company, in trust to the undersigned, to secure the payment of $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Western Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional.

(Signed) I. SEYMOUR,
N. A. COWDREY,
Trustees.

77 EXHIBIT 4, R. E. S., *Examiner, &c.*

UNITED STATES OF AMERICA:

Sixty coupons attached. Last six months' interest, $35, payable with bond.

1,000.] STATE OF WISCONSIN. [1,000.

Milwaukee and St. Paul Railway Company.

Number 2425.] U. S. Coat of Arms. [Number 2425.

Know all men by these presents, that the Milwaukee and St. Paul Railway Company are indebted to Isaac Seymour & N. A. Cowdrey, citizens of the State of New York, or bearer, in the sum of one thousand dollars, for the purchase-money of their entire corporate property, which sum said company promise to pay to the bearer hereof, on the first day of January, A. D. 1893, at the office or agency of the company, in the city of New York, with interest thereon from the first day of July, A. D. 1863, at the rate of seven per centum per annum, payable semi-annually, at its office or agency in the city of New York, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons, as they severally become due; and in case of non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable.

The said company also agree to make the scrip preferred stock attached to this bond full-paid stock at any time within ten days after any dividend shall have been declared, and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond, and the unmatured interest-warrants. This bond is one of a series of bonds, amounting to $4,200,000, and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then this issue of bonds may be increased $2,000,000. If the company acquire the Milwaukee and Horicon Railroad, this issue of bonds may be increased $400,000.

All of which bonds are executed and delivered in conformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors. And the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863. And also to the benefits to be derived from a sinking-fund established by and in said mortgage or deed of trust of all such sums of money as are received from the sales of lands donated or granted to this company by the United States, or by the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon, and duly signed by both of said trustees, or their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage.

In witness whereof the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this 6th day of May, A. D. 1863.

[L. S.] (Signed) D. M. HUGHES, *President.*
(Signed) RUSSELL SAGE, JR., *Secretary.*

(Written cross the face:) This is a copy and not an original.

$35.] COUPON No. 60. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars on the first day of July, 1892, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 54. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1889, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 48. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1886, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 42. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1883, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 36. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1880, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 30. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1877, in the city of New York, for interest due on bond No. .

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$35.] COUPON No. 24. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July 1874, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 18. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1871, in the city of New York, for interest due on bond No. .

, *Agent.*

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The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1892, in the city of New York, for interest due on bond No. .

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$35.] COUPON No. 53. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1889, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 47. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1886, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 41. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1883, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 35. [$35

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1880, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 29. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1877, in the city of New York, for interest due on bond No. .

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$35.] COUPON No. 23. [$35.

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$35.] COUPON No. 17. [$35.

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$35.] COUPON No. 52. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars on the first day of July, 1888, in the city of New York, for interest due on bond No. .

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$35.] COUPON No. 46. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1885, in the city of New York, for interest due on bond No. .

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$35.] COUPON No. 40. [$35.

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The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1879, in the city of New York, for interest due on bond No. .

, *Agent.*

$35] COUPON No. 28. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1876, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 22. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1873, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 16. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1870, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 57. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1891, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 51. [$35.

The Milwaukee & St. Paul Railway Compay promise to pay to the bearer thirty-five dollars on the first day of Jan., 1888, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 45. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1885, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 39. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1882, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 33. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1879, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 27. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1876, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 21. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1873, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 15. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1870, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 56. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1890, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 50. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1887, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 44. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars on the first day of July, 1884, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 38. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1881, in the city of New York, for interest on bond No. .

, *Agent.*

$35.] COUPON No. 32. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1878, in the city of New York, for interest on bond No. .

, *Agent.*

$35.] COUPON No. 26. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1875, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 20. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of July, 1872, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 55. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1890, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 49. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1887, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 43. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1884, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 37. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1881, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 31. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1878, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 25. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1875, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 19. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars on the first day of Jan., 1872, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

N. B.—Each of the coupons is numbered 2425, & signed "H. E. Glassford," agent.

78 (Indorsed on the back:) Copy. $1,000 bond, No. 2425. First mortgage, Milwaukee & St. Paul Railway Company. 7 per cent. convertible. Interest, January & July. Due, 1893.

This is to certify that this bond is included in a first-mortgage of the entire corporate property, real and personal, rights, franchises, and immunities of the Milwaukee and St. Paul Railway Company, in trust to the undersigned, to secure the payment of $4,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional.

(Signed) J. SEYMOUR,
N. A. COWDREY,
Trustees.

79 EXHIBIT 5.—R. E. S., *Examiner*, &c.

UNITED STATES OF AMERICA:

Sixty coupons attached. Last six months' interest, $35, payable with bond.

1,000.] STATE OF WISCONSIN. [1,000.

Milwaukee and St. Paul Railway Company.

Number 2070.] U. S. Coat of Arms. [Number 2070.

Know all men by these presents, that the Milwaukee and St. Paul Railway Company are indebted to Isaac Seymour, Horace Galpen, Wil-

liam Gould, Fred. P. James, D. M. Hughes, George Smith, and Francis Vose, citizens of the State of New York, or bearer, in the sum of one thousand dollars for the purchase-money of their entire corporate property; which sum said company promise to pay to the bearer hereof, on the first day of January, A. D. 1893, at the office or agency of the company, in the city of New York, with interest thereon from the first day of July, A. D. 1863, at the rate of seven per centum per annum, payable semi-annually, at its office or agency in the city of New York, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due; and in case of non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable.

The said company also agree to make the scrip preferred stock attached to this bond full-paid stock at any time within ten days after any dividend shall have been declared, and become payable on said preferred stock upon surrender to the company, in the city of New York, of this bond and the unmatured interest-warrants.

This bond is one of a series of bonds amounting to $2,200,000, and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then this issue of bonds may be increased $2,000,000; and if the company acquire the Milwaukee and Western Railroad, and extend it from Columbus to Portage, then this issue may be increased $2,000,000; and if the company acquire the Milwaukee and Horicon Railroad, this issue of bonds may be increased $400,000.

All of which bonds are executed and delivered in comformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors.

And the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D. 1863; and also to the benefits to be derived from a sinking-fund established by and in said mortgage or deed of trust, of all such sums of money as are received from the sales of lands donated or granted to this company by the United States or by the State of Wisconsin.

This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon and duly signed by both of said trustees, or their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage.

In witness whereof the said company have caused their corporate seal to be hereto affixed and their president and secretary to sign the same, this 6th day of May, A. D 1863.

[L. S.] (Signed) D. M. HUGHES, *President.*
(Signed) RUSSELL SAGE, JR., *Secretary.*

(Written across the face:) This is a copy and not an original.

$35.] COUPON No. 60. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1892, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 54. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1889, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 48. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1886, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 42. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1883, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 36. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1880, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 30. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1877, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 24. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1874, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 18. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1871, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 59. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1892, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 53. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars, on the first day of Jan., 1889, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 47. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1886, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 41. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1883, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 35. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1880, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 29. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1877, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 23. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1874, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 17. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1871, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 58. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1891, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 52. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1888, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 46. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1885, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 40. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1882, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 34. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1879, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 28. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1876, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 22. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1873, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 16. [$36.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1870, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 57. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1891, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 51. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1888, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 45. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars, on the first day of Jan., 1885, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 39. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1882, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 33. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1879, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 27. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1876, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 21. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1873, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 15. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1870, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 56. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1890, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 50. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1887, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 44. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1884, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 38. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1881, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 32. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1878, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 26. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July, 1875, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 20. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of July 1872, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

$35.] COUPON No. 55. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1890, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 49. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1887, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 43. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1884, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 37. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1881, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 31. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the

bearer thirty-five dollars, on the first day of Jan., 1878, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 25. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1875, in the city of New York, for interest due on bond No. .

, *Agent.*

$35.] COUPON No. 19. [$35.

The Milwaukee & St. Paul Railway Company promise to pay to the bearer thirty-five dollars, on the first day of Jan., 1872, in the city of New York, for interest due on bond No. .

, *Agent.*

(Written across the face:) This is a copy & not an original.

N. B.—Each of the coupons is numbered 2070, and signed "H. E. Glassford," agent.

80 (Indorsed on the back:) Copy. $1,000 bond, No. 2070. First mortgage, Milwaukee & St. Paul Railway Company. 7 per cent. convertible. Interest, January and July. Due 1893.

This is to certify that this bond is included in a first mortgage of the entire corporate property, real and personal, rights, franchises, and immunities of the Milwaukee and St. Paul Railway Company, in trust to the undersigned, to secure the payment of $2,200,000; and if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Western Railroad, then it may be to secure the payment of $2,000,000 additional; and if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional.

(Signed) J. SEYMOUR,
N. A. COWDREY,
Trustees.

81 *Extract from chapter lxxix of general laws of Wisconsin.*

SEC. 33. Any railroad company may borrow such sum or sums of money at such rates of interest and upon such terms as said company, or its board of directors, may authorize and agree upon and may deem necessary or expedient, and may execute one or more trust-deeds or mortgages, or both, as occasion may require, on any railroad or railroads constructed or in process of construction by said company, for the amount or amounts borrowed or owing by such company, upon such terms and in such manner as such company or its board of directors shall deem expedient; and such company may make such provisions in such trust-deed or mortgage for pledging or transferring their railroad track, right of way, depot-grounds, rights, privileges, franchises, immunities, machine-houses, rolling-stock, furniture, tools, implements, appendages, and appurtenances belonging to or used in connection with

such railroad or railroads, in any manner whatever, as security for any bonds, debts, or sums of money that may be secured by such trust-deed or mortgage as they shall think proper; and in case of any sale of any railroad or railroads, or any part thereof, constructed or in pro-
82 cess of construction by any railroad company, on or by virtue of any trust-deed, or on any foreclosure of any mortgage, thereupon the party or parties acquiring title under any such sale, and their associates, successors, and assigns, shall have and acquire thereby, and shall exercise and enjoy thereafter all and the same rights, privileges, grants, franchises, immunities, and advantages in and by said mortgage or trust-deed enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage or contracting such debt, so far as the same relate and appertain to that portion of said road, or the line thereof, mentioned and described in and conveyed by said mortgage or trust-deed, and no further, as fully and absolutely in all respects as the corporators, shareholders, officers, and agents of such company might or could have done therefor had not such sale or purchase taken place. Such purchaser or purchasers, their associates, successors, or *assignors* [assignees] may proceed to organize anew and elect directors, distribute and dispose of stock, take the same or another name, and may conduct their business generally under, provided in the charter of such railroad company, with such variations in manner and form of organization as their altered circumstances and better convenience may seem to require; provided, however, that no greater
83, 84 or enlarged powers shall be exercised by the new organization than are conferred by the charter of such company.

(Endorsed:) Hotchkiss vs. Banks. Extracts from laws of Wisconsin. Exhibit 4a. R. E. S., examiner, &c.

85 [Sixty cents U. S. revenue stamp.]

Articles of association of the purchasers of the La Crosse and Milwaukee Railroad Company to organize a corporation, under the statute laws of Wisconsin, under the name of the Milwaukee and St. Paul Railway Company.

Whereas that part of the La Crosse and Milwaukee Railroad, and the property, real and personal, described in the mortgage deed made by that company to Greene C. Bronson, James T. Soutter, and Sheppard Knapp, dated December 31st, A. D. 1856, in trust to them to secure the payment of the indebtedness therein named, and also described in a deed executed by the same parties, supplemental to the mortgage deed in trust last above named, and dated January 28th, A. D. 1858, both of which deeds are recorded in the office of the secretary of state for the State of Wisconsin, and copies thereof are on file in the district court of the United States for the district of Wisconsin, in the case of Bronson, Soutter, and Knapp, trustees, complainants, against the La Crosse and Milwaukee Railroad Company and others, defendants, to which copies, records, and files reference is here made for a more par-
86 ticular description of the property, real and personal, has been sold in pursuance of certain foreclosure proceedings had in the United States court for the district of Wisconsin, on the complaint of said Greene C. Bronson, James T. Soutter, and Sheppard Knapp, trustees under said mortgage deed of trust made by the said La Crosse and Milwaukee Railroad Company, dated December 31st, A. D. 1856, and of

a certain supplemental mortgage deed of trust executed by the same parties, and dated January 28th, 1858; to the records of which court, and to the proceedings had therein in said action, reference is here made for a more full and particular statement thereof;

And whereas the undersigned have purchased said road at said sale, and all its property, real and personal, franchises and privileges, as described in said deeds:

Now, therefore, be it known that we, the undersigned purchasers as aforesaid, being desirous of forming a corporation under and by virtue of the laws of the State of Wisconsin, do hereby associate together for that purpose, and do hereby declare the following to be the certificate or articles of association, and we execute the same in duplicate, to the end that one may be filed in the office of the secretary of state for the State of Wisconsin, and the other to remain in the records of our corporation as a record of our corporate rights, privileges, and immunities.

87 First. Our corporate name shall be the "Milwaukee and St. Paul Railway Company."

Second. The number of directors shall not be less than nine or more than thirteen, and each director from and after ninety days from this date shall own at least one hundred shares of the capital stock of this corporation, and if at any time any director shall cease to own such amount, he shall be disqualified from being such director, and his office shall be from thenceforth vacant.

For the first year, and until others are chosen in their place, the following persons are the directors: Isaac Seymour, N. A. Cowdrey, Horace Galpen, David M. Hughes, William Gould, Frederick P. James, George Smith, all of New York; Asahel Finch and William H. White, both of Milwaukee.

Third. Our capital stock shall not exceed, except as hereinafter provided, $4,200,000, divided into 42,000 shares, which said shares shall be subdivided as follows:

An amount not exceeding $3,450,000, or 34,500 shares shall be set apart and designated as "preferred stock," and the full sum of $100 per share we hereby declare and acknowledge to be paid thereon, except on so much of this class as is hereinafter designated as "scrip preferred stock," and on this scrip preferred stock we hereby declare and acknowledge the sum of one dollar per share to be paid.

88 The balance of said capital stock of $750,000, or 7,500 shares, shall be designated as common stock, and we hereby declare and acknowledge the full sum of one hundred dollars per share to have been paid thereon.

Of the said $3,450,000 preferred stock an amount not exceeding $2,200,000 at par, or 22,000 shares shall be set apart and designated as "scrip preferred stock." The scrip preferred stock here named or hereafter named shall not at any time exceed the amount of outstanding mortgage-bonds hereinafter named.

The scrip preferred stock shall not be subject to any assessment and shall entitle the person in whose name it stands upon our books to all the rights and privileges of other stockholders, except that it shall not entitle the holder to any dividend or other profit or increase from the income or assets of this company.

It shall be issued in certificates of five and ten shares each, and shall accompany each mortgage-bond of the company.

The holder thereof shall have the right, at any time within ten days after any dividend shall have been declared and become payable on the

preferred stock, to make the scrip preferred stock attached to this bond full-paid stock upon the surrender to the company of the mortgage-bond named by its number in his scrip-certificate, and upon surren-
89 dering said scrip-certificate and bond he shall be entitled to receive therefor the same number of shares of preferred full-paid stock, and entitled to dividends.

The said preferred stock, except said scrip-stock, shall be entitled to a dividend of seven per centum per annum from the net earnings of each current year, after payment of interest on all the mortgage-bonds, if the company earn so much during the current year, and before the payment of dividends to any other class of stockholders; but the company may reserve a reasonable working capital or surplus before the dividend shall be declared or paid on said preferred stock, which surplus shall not exceed at any time the aggregate sum of $250,000 over and above the floating or unfunded debt and the accrued interest on the mortgage-bonds. If the net earnings of the company are not as much as seven per cent. in any one year, then the said preferred stock shall receive for that year a dividend of whatever the said net earnings are after the payment of interest on the mortgage-bonds and the reasonable reserve for a working capital, as above described. Said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of any preceding year.

And whenever the company earns sufficient over and above the
90 payment of interest on the bonds and reserve above named to pay a greater sum than seven per cent. on outstanding preferred stock and seven per cent. on the common stock, then the said preferred stock shall share pro rata with the common stock in such earnings.

Fourth. The directors of the company shall have power to increase the said capital stock as follows, viz*t*: To acquire by purchase or otherwise either the road and property now known as the Eastern Division of the La Crosse and Milwaukee Railroad Company, or any bonds secured by mortgage thereon, the sum of $4,000,000, which shall be subdivided as follows: Into the preferred stock named in the third article hereof and in addition thereto and as a part thereof, $2,750,000, or 27,500 shares, of which $2,000,000, or 20,000 shares, shall be designated as scrip preferred stock of the same class and to be issued and used in the same manner as is provided in the third article hereof. The balance of said $4,000,000 increase—$1,250,000 or 12,500 shares—shall be in addition thereto and as a part thereof of the common stock as provided in said third article.

And if at any time the directors deem it for the best interest of this company to acquire, by purchase or otherwise, the road and prop-
91 erty now known as the Milwaukee and Western Railroad, commonly called the Watertown road, or any bonds of said road secured by mortgage thereof, then and to that end, and for the construction thereof from Columbus to Portage, and for other uses of the company, the directors are hereby authorized to increase the capital stock and to issue the like amount of bonds, preferred stock, scrip stock, and common stock as named in the previous paragraph of this article and in addition thereto.

And if at any time the directors deem it for the interest of this company to acquire by purchase or otherwise the road or property now known as the Milwaukee & Horicon Railroad, or any bonds of said company, secured by mortgage of said road, then and to that end the directors are hereby authorized to increase the capital stock, and to issue it in addition to the amounts previously stated, as follows, viz*t*: of the preferred

stock, $800,000, or 8,000 shares, of which $400,000, or 4,000 shares, shall be designated as scrip preferred stock, of the same class and to be issued and used in the same manner as above provided, and to issue of the common stock $250,000, or 2,500 shares.

If at any time the directors deem it for the best interest of this company to acquire by purchase or otherwise the road or property of any railroad company connecting with the railroad of this company, and which they now or hereafter shall be authorized by the laws of Wisconsin to consolidate or join stock with, then, and to that end, the directors of this company are hereby authorized to increase and issue either or both classes of its capital stock in addition to the amounts above provided to an amount not exceeding the gross amount of the capital stock of the company acquired, consolidated, or joined stock with.

Fifth. This corporation shall have all the powers, privileges, and immunities of railroad companies under the laws of Wisconsin, and especially to sue and be sued; to acquire, use, and sell, bargain, lease, and convey all kinds of property, real and personal, necessary or convenient to operate, use, and maintain said railroad, or the part or the whole of any other railroad hereafter acquired by them within the State of Wisconsin; to make any by-laws for the government and management of the corporation or its officers not contrary to the laws of Wisconsin or of the United States; to make, have, and use a common seal, and the same to alter and renew at pleasure; and the said corporation is hereby invested with all the powers, privileges, and immunities which are necessary or convenient to carry into effect the purposes and objects of this corporation as herein expressed.

The said corporation is hereby authorized to take, transport, and carry property and persons by railway by force and power of steam, or of animals, or of any mechanical or other power, or of any combination of them which said company may choose to apply, and from any part of the city of Milwaukee to the Mississippi River, and to and across said river, and to and from all intermediate places. They are also authorized and empowered to lease, buy, purchase, receive, hold, use, sell, and convey all the property and *purchases*, furniture and equipments, real and personal, of the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, the Milwaukee and Western Railroad Company, the Milwaukee and Horicon Railroad Company, or of any other railroad company to which either of the above-named companies is or may be a successor, or with which this company may join stocks or consolidate with; also the capital stock of either of them, and any or all mortgage-bonds or other evidences of debt made by either of them; and when purchased by this company they shall also have all the legal and equitable rights that the holders thereof had before their sale to this company; also to support, maintain, hold, use, sell, and convey one or more steam ferry-boats to be used on the Mississippi River; also to purchase, hold, use, sell, and convey upon this line of railway or elsewhere any materials, engines, cars, steam ferry-boats, or any other property, real or personal, necessary or convenient for this corporation, and for their use in transporting persons and property; to purchase, receive, and hold, and to sell and convey such real estate as may be necessary and convenient in accomplishing the object for which this company is incorporated.

This company shall also have all the powers, rights, privileges, and equities which are or where had by the La Crosse and Milwaukee Railroad Company to acquire, receive, hold, bargain, sell, and convey lands;

and they shall also have power to purchase, acquire, receive, hold, bargain, grant, sell, and convey all or any part of the lands or the appurtenances thereto which have been heretofore or shall hereafter be granted or donated by the United States to the State of Wisconsin to aid in the construction of railroads in that State, or by either of them, to aid in building the road of this company; and also all the rights, equities, or things whatsoever pertaining to said lands; and also to have, hold, bargain, and sell all claims, demands, or equities to said lands against the United States, the State of Wisconsin, or against any and all persons or corporations whatsoever.

95 Also to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property.

The said corporation shall have power to build and construct any new line of railway necessary or convenient in straightening the old line, or in extending it so as to conform to the requirements of the charters of either of the companies herein named, or with the law of the State of Wisconsin; and to build or extend their line of railway in such a manner and form and to such place or places now or hereafter authorized by law as the directors deem for the best interest of the company; but no expenditure shall be made for this purpose unless it is from the surplus earnings of the company, after providing for the payment of interest on all its mortgage debt then outstanding.

Sixth. The corporation shall have power to issue bonds in sums of $500 and $1,000, to an amount not exceeding two million two hundred thousand dollars, unless the company shall purchase or acquire either the said Eastern Division of the La Crosse and Milwaukee Railroad or some or all of the bonds which are a lien thereon, known as first mortgage eastern division, city of Milwaukee mortgage, or the second mortgage, so called, of said eastern division; in which event the

96 corporation is authorized to issue an additional amount of said bonds, not exceeding two million of dollars; and unless the corporation shall purchase or acquire either the said Milwaukee and Western Railroad, (commonly called the Watertown road,) or some or all of the bonds which are a first lien thereon, and shall build, or undertake to build, or extend said road from Columbus to Portage, in which event the corporation is authorized to issue an additional amount of said bonds, not exceeding four hundred thousand dollars. All of said bonds shall bear an interest of not exceeding seven per centum per annum, the principal and interest payable in the city of New York, the interest semi-annually, the principal within thirty years from date. They shall also contain a provision that if the company make default in the payment of interest, or in the application of the sinking fund as hereinafter provided for six months, the principal shall thereupon become due without demand or notice. The said corporation shall have power to secure the payment of all the bonds above authorized to be issued by a mortgage or trust deed upon this franchise and all the real and personal property of the company now owned or hereafter to acquired by them, and to embrace the entire corporate property and all its franchises and privileges.

97 The mortgage shall also contain a provision for a sinking-fund for the payment of said mortgage-bonds by which the new company shall obligate themselves to pay to the trustees of said mortgage-bonds all such sums of money, less the expenses of sales, as shall be derived from the sale of any lands which may have been or shall hereafter be donated or granted by either the United States or the State of Wisconsin to aid in building this road, or that shall in any manner be acquired

by this company; and said lands shall be fairly and equitably valued and classified by the company, or by such persons as they together shall appoint; and upon sale of said lands said mortgage-bonds may be received at par and accrued interest in payment therefor, and the bonds thus received in payment shall be immediately cancelled. The company shall keep a proper registry or account of all the bonds thus paid by them, and the number or amount of bonds thus cancelled shall be reported by said company to the stockholders at each annual meeting, and said bonds shall be presented and shown at said meeting. And said trust-deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company as a sinking-fund for the payment of said bonds.

98 The bonds secured by said mortgage shall be convertible, at the option of the holder, into the preferred stock at any time within ten days after any dividend shall have been declared and become payable on said preferred stock.

The said mortgage-deed and bonds shall be signed by the president or vice-president and secretary, and the seal of the company shall be affixed thereto.

And, except as herein expressly provided, the corporation shall have no power or authority to mortgage or otherwise encumber their property, real or personal, unless the assent in writing of a majority in interest of the owners and holders of all the capital stock issued by said corporation shall be first had and obtained authorizing the same; and no assent shall be taken from agents or by proxy unless the power of attorney held by the agent or proxy shall expressly authorize such assent.

And in the event of this company acquiring the said eastern division of the La Crosse and Milwaukee railroad, the said mortgage or trust deed shall also contain a provision requiring so many of the mortgage-bonds above authorized to be issued as are reserved for the payment of the first mortgage eastern division to be cancelled from time to time as the present sinking-fund on that mortgage shall have cancelled of that mortgage.

99 The said mortgage or trust deed may also contain covenants and agreements authorizing the bondholders to vote in all stockholders' meetings as follows: each one hundred dollars of the principal of the outstanding bonds shall be entitled to one vote, and giving the bondholders the same pro rata voice in the management of the company with and as if they were stockholders to the amount of their bonds.

Seventh. The immediate government and direction of the affairs of the company shall be vested in a board of not less than nine nor more than thirteen directors, and after the period for which the present directors are designated expires, said directors shall be chosen by the stockholders of said company by ballot at their annual meeting in each year and shall hold their office until the next annual meeting of the company, or until others are duly elected and qualified to take their places as directors.

The preferred stockholders shall elect the directors until a dividend shall have been earned, declared, and paid on the common stock, and until then the common stockholders shall have no vote or voice in the directors.

100 The said directors shall elect one of their number president of the board who shall also by virtue thereof be president of the company, and shall also elect a vice-president from one of their num-

ber. They shall also appoint a secretary, and such other officers or agents as the necessity or convenience of the company requires.

A majority of the directors of the company shall constitute a quorum to do business. A less number may adjourn from time to time.

In all meetings of the stockholders of the said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy. But this shall not authorize a common stockholder to have a vote for the choice of directors until a dividend has been paid on the common stock as above provided.

In case it shall so happen that an election of directors shall not be made on the day appointed for that purpose, said corporation shall not for that cause be dissolved, but said election may be had on any day to which the stockholders shall adjourn, or which shall be appointed by the directors, and said directors shall have power to fill any vacancy which may occur in their board by death, resignation, or otherwise; also to add to their number, so as not to exceed thirteen in all.

101 The said directors shall have power to make and prescribe such by-laws, rules, and regulations as they shall deem proper and needful touching the disposition and management of the stock, property, estate, and effects of said company; the transfer of shares; the duties and conduct of their officers, agents, and servants; and all matters whatever which may appertain to the concerns of said company not contrary to those established by the stockholders or to this act, or to the laws of the State of Wisconsin or of the United States.

Also to petition and apply for any law of the State of Wisconsin in alteration hereof, but such law shall contain a clause requiring the same to be submitted to the stockholders for approval, upon which the validity of any alterations hereof shall depend.

Eighth. The signing of this certificate or articles of association is hereby declared to be a special meeting of the stockholders, and a vote and the assent of the stockholders to borrow money and to mortgage the road for the amount as above set forth, and also to be a waiver of any notice required of the meeting on that subject.

Ninth. The certificates of stock issued by this company shall

102 upon their face be made subject to all the terms and conditions of these articles of association.

Tenth. Upon the dissolution of this corporation, after the payment of all its debts, the remaining assets shall be divided among the different classes of stockholders according to their preferences; that is to say, the preferred stock, except the scrip stock, shall be first paid in full, and the balance divided among the common stockholders pro rata. But this corporation shall not be dissolved by any act of the company without an affirmative vote of two-thirds of each class of stockholders.

Eleventh. These articles of association may be modified, altered, or amended at any annual or special meeting, duly called, at which a majority in interest of each class of stockholders shall be present and voting in the affimative. But no stockholders shall become liable to pay any money by any such action unless he shall have voted therefor or assented thereto.

Twelfth. Annual meetings of the stockholders for the choice of directors shall be held in the State of Wisconsin in the month of

103 June in each year after 1864, which meeting shall be called by the directors, who shall specify the time and place for holding the same. And at least thirty days previous to each annual meeting the directors shall send through the post-office to each stockholder, to the

address, as shown by the company's books, a full and specific statement of all business, acts, and doings of the corporation up to the 1st day of January preceding.

Witness our hands at the city of Milwaukee this 5th day of May, 1863.

W'M WALLACE PRATT.
W'M H. WHITE.

(Endorsed:) Hotchkiss vs. The Shoe & Leather Bank, &c. Copy articles of association of M. & S't P. R. W. Co. C. W. Bangs, sol'r, &c. Exhibit 5. R. E. S., examiner, &c.

104, 105 *Certificate for scrip preferred stock.*

Issued January 2nd, ~~1864~~ erased,
Dec. 22nd, 1863.

{ M. & ST. P. RAILWAY. } D. M. H.

No. 1947.] Cut. [Ten shares.

This is to certify that Russell Sage, of New York, is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage-bond ( ) No. 2070 of the company, and all unmatured coupons thereon at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock this company, the said James & Co. is entitled to receive ten shares of said full-paid preferred stock.

This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate, and the stock represented hereby, is issued and reserved subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.

In witness whereof the company have caused this certificate to be signed by the president.

D. M. HUGHES, *President.*

H. E. GLASFORD,
Transfer Agent.

Countersigned by—

JOHN YELVERTON,
Registrar of Transfers.

Shares $100 each, on which $1 per share has been paid.

(Written across the face:) Cancelled. Cancelled. Cancelled. Cancelled.

106 2070.

(Indorsed on back.)

Know all men by these presents, that for value

received have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over all or any part of the said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In witness whereof have hereunto set hand this day of one thousand eight hundred and seventy-

RUSSELL SAGE.

Signed and delivered in presence of—
JA'S G. DEMOTT.

Erased: F. P. JAMES & CO.

{ M. & ST. P. SC'P' RAILWAY. }

Hotchkiss vs. Shoe & L. Bank, &c. Exhibit 6. R. E. S., examiner.

107, 108 No. 146.

For value received, the undersigned hereby transfer and assign to F. P. James & Co., of New York, twenty shares in the capital stock of The Milwaukee and St. Paul Railway Co., designated as scrip preferred stock, subject to all the terms, conditions, and limitations of the articles of association of the company.

Dated New York, Dec. 23, 1863.
Old certif. surrendered, No. 1946 & 1947.
New certif. issued, No. 7085 & 7086.

RUSSELL SAGE, *Pr.*
P. N. A. COWDREY, *Att'y.*

EXHIBIT 7.—R. E. S., *Examiner, &c.*

(Endorsed:) Hotchkiss v. Shoe & L. Bank, &c. Exhibit 7.

109 No. 253.] [40 shares.

For value received, the undersigned hereby transfer and assign to Charles B. Hotchkiss, of New Haven, Conn., forty shares in the capital stock of The Milwaukee and St. Paul Railway Company, designated as scrip preferred stock, subject to all the terms, conditions, and limitations of the articles of association of the company, and bonds. Also m't'ge bonds Nos. 1048, 1049, 2070, 1947.

Dated New York, Sept. 17, 1864.
Old certif. surrendered, No. 1048, 1049, 2070, 7086.
New certif. issued, No. 7665, 7666, 7667, 7668. H.

F. P. JAMES & CO.
Per C. P. GILPIN, *Att'y.*

110 (Indorsed:) Hotchkiss vs. Shoe & L. Bank. Exhibit 8. R. E. S., ex., &c.

address, as shown by the company's books, a full and specific statement of all business, acts, and doings of the corporation up to the 1st day of January preceding.

Witness our hands at the city of Milwaukee this 5th day of May, 1863.

W'M WALLACE PRATT.
W'M H. WHITE.

(Endorsed:) Hotchkiss vs. The Shoe & Leather Bank, &c. Copy articles of association of M. & S't P. R. W. Co. C. W. Bangs, sol'r, &c. Exhibit 5. R. E. S., examiner, &c.

104, 105 *Certificate for scrip preferred stock.*

Issued January 2nd, 1864, (erased.)
Dec. 22nd, 1863.

{ M. & ST. P. } D. M. H.
{ RAILWAY. }

No. 1947.] Cut. [Ten shares.

This is to certify that Russell Sage, of New York, is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage-bond ( ) No. 2070 of the company, and all unmatured coupons thereon at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock this company, the said James & Co. is entitled to receive ten shares of said full-paid preferred stock.

This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate, and the stock represented hereby, is issued and reserved subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.

In witness whereof the company have caused this certificate to be signed by the president.

D. M. HUGHES, *President.*

H. E. GLASFORD,
Transfer Agent.

Countersigned by—

JOHN YELVERTON,
Registrar of Transfers.

Shares $100 each, on which $1 per share has been paid.

(Written across the face:) Cancelled. Cancelled. Cancelled. Cancelled.

106 2070.

(Indorsed on back.)

Know all men by these presents, that for value

received have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over all or any part of the said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In witness whereof have hereunto set hand this day of one thousand eight hundred and seventy-

RUSSELL SAGE.

Signed and delivered in presence of—
JA'S G. DEMOTT.

Erased: F. P. JAMES & CO.

{ M. & ST. P. }
{ SC'P' RAILWAY. }

Hotchkiss vs. Shoe & L. Bank, &c. Exhibit 6. R. E. S., examiner.

107, 108 No. 146.

For value received, the undersigned hereby transfer and assign to F. P. James & Co., of New York, twenty shares in the capital stock of The Milwaukee and St. Paul Railway Co., designated as scrip preferred stock, subject to all the terms, conditions, and limitations of the articles of association of the company.

Dated New York, Dec. 23, 1863.
Old certif. surrendered, No. 1946 & 1947.
New certif. issued, No. 7085 & 7086.

RUSSELL SAGE, *Pr.*
P. N. A. COWDREY, *Att'y.*

EXHIBIT 7.—R. E. S., *Examiner*, &c.

(Endorsed:) Hotchkiss v. Shoe & L. Bank, &c. Exhibit 7.

109 No. 253.] [40 shares.

For value received, the undersigned hereby transfer and assign to Charles B. Hotchkiss, of New Haven, Conn., forty shares in the capital stock of The Milwaukee and St. Paul Railway Company, designated as scrip preferred stock, subject to all the terms, conditions, and limitations of the articles of association of the company, and bonds. Also m't'ge bonds Nos. 1048, 1049, 2070, 1947.

Dated New York, Sept. 17, 1864.
Old certif. surrendered, No. 1048, 1049, 2070, 7086.
New certif. issued, No. 7665, 7666, 7667, 7668. H.

F. P. JAMES & CO.
Per C. P. GILPIN, *Att'y.*

110 (Indorsed:) Hotchkiss vs. Shoe & L. Bank. Exhibit 8. R. E. S., ex., &c.

111 *Certificate for scrip preferred stock.—Issued Jan. 2nd*, 1864.

No. 2070.] Cut. [Ten shares.

This is to certify that F. P. James & Co., of New York, is entited to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of association of the company This stock is not entitled to any dividend. It has one dollar per share paid thereon and not liable or subject to any assessment. Upon the surrender of this certificate and mortgage-bond ( ) No. 2070 of the company, and all unmatured coupons thereon, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said James & Co. is entitled to receive ten shares of said full-paid preferred stock.

This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate, and the stock represented hereby, is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.

In witness whereof the company have caused this certificate to be signed by the president.

D. M. HUGHES, *President.*

H. E. GLASFORD,
Transfer Agent.

Countersigned by—

JOHN T. YELVERTON,
Registrar of Transfers.

Shares $100 each, on which $1 per share has been paid.

(Written across the face:) Cancelled. Cancelled. Cancelled. Cancelled. Cancelled.

112 2071.

(Indorsed on back:)

Know all men by these presents, that for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over all or any part of the said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In witness whereof have hereunto set hand this day of one thousand eight hundred and seventy-

F. P. JAMES & CO.

Signed and delivered in presence of—
JA'S G. DEMOTT.

Exhibit 9. R. E. S., examiner, &c.

113 [25 c.—25 cents rev. stamp cancelled—25, 25.]

Certificate for scrip preferred stock.—Issued July 7th, 1863.

D. M. H.

No. 2425.] (Frontispiece.) [Ten shares.

This is to certify that A. Noxon, of Crescent, N. Y., is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage-bond ( ) No. 2425 of the company, and all unmatured coupons thereon, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said Noxon is entitled to receive ten shares of said full-paid preferred stock.

This stock is transferable only on the books of the company, at their office, in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate and the stock represented hereby, is issued and
114 received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.

In witness whereof the company have caused the certificate to be signed by the president.

D. M. HUGHES,
President.

H. E. GLASSFORD,
Transfer Agent.

Countersigned by John T. Yelverton, register of transfers. Cancelled.

Shares $100 each, on which one dollar per share has been paid.

(Written across the face and names:) Cancelled. Cancelled. Cancelled. Cancelled.

(Endorsed:) 2425.

Know all men by these presents that for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the scrip stock of the Milwaukee and S't Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over all or any part of the said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In testimony whereof have hereunto set hand this day of , one thousand eight hundred and sixty-

A. NOXON.

Signed and delivered in the presence of—
GRAHAM R. WICKS.

[Twenty-five cents int.-rev., life-insurance, M. & St. P., Sept. 13, 1864.]

Exhibit 10. R. E. S., examiner, &c.

115 No. 254.

For value received, the undersigned hereby transfer and assign to Charles B. Hotchkiss, of New Haven, Conn., ten shares in the capital stock of the Milwaukee and St. Paul Railway Co., designated as scrip preferred stock, subject to all the terms, conditions, and limitations of the articles of association of the company. Also mortgage-bonds numbered 2425.

Dated New York.

Old certif. surrendered, No. 2125.

New certif. issued, No. 7669.

A. NOXON, *P'r.*

H. C. P. GILPIN, *Att'y.*

(Endorsed:) Hotchkiss vs. Shoe & L. Bank. Exhibit 11, R. E. S., examiner, &c.

116, 117 EXHIBIT 12.—R. E. S., *examiner, &c.*

[From stock-ledger of scrip preferred stock Milwaukee & St. Paul Railway Co.]

DR. CHARLES B. HOTCHKISS, NEW HAVEN, CONN. CR.

1864.			
Sept. 17 ..	By F. P. James & Co	253	40 00
" " ..	" A. Nixon	254	10 00

(Endorsed:) Hotchkiss vs. Shoe & Leather Bank, &c.

We admit the within to be a true copy of plaintiff's Exhibit 12, and consent that it may be filed as such exhibit.

BEACH & BEAMAN,
Sol'rs for Nat. S. & L. B'k.
SMITH & WOODWARD,
Sol'rs for Tradesmen's National B'k.

118, 119 EXHIBIT 13.

To whom issued.	When delivered.	No of certific'e.	No of shares.	Date of certificate.	By whom surrendered.	When surrendered.	No of new certificate.	No of shares.	Total shares.	Date of certificate.
Charles B. Hotchkiss		7665	10	Sept. 17, 1864.						
Do		7666								
Do		7667								
Do		7668								
Do		7669								

(Endorsed:) Hotchkiss v. Shoe & L. Bank, &c., pl'ffs. Exhibit 13. R. E. S., examiner, &c.

120, 121, NEW YORK, *Dec. 28th*, 1870.

Before Richard E. Stillwell, esq., examiner.

Testimony for the Defendant "The Tradesmen's National Bank."

ANTHONY HALSEY, being duly sworn, deposes and says:

Examined by the counsel for defendant, "Tradesmen's National Bank:"

I am cashier of the defendants, The Tradesmen's National Bank, and have so been since January, 1861. I have in my possession, as such cashier, two bonds of the Milwaukee and St. Paul Railway Company, Nos. 2070 and 2425, which bonds I hold on behalf of the Tradesmen's National Bank. On the 22d day of January, 1869, we made a loan of $800, to B. S. Midgley, for which we took his note, holding one of these bonds as collateral security. On the 29th of January we made another loan of $800, which made $1,600, for which latter amount we took his note, and as collateral security this second bond, retiring the $800 note already given. This $1,600 note was renewed from time to time until some time after the 8th of December, when we made an additional loan to him of $150 on these bonds. He then, on the fourth of February, 1870, gave us a new note, copy of which new note is as follows:

"$1,791.75.] NEW YORK, *Feb.* 4, 1870.

"On demand, after date, I promise to pay to the Tradesmen's National Bank, or order, seventeen hundred and ninety-one and $\frac{75}{100}$ dollars for value received, with interest from the date hereof at the rate of seven per cent. per annum; having deposited with it as collateral security, 2,000 Milwaukee & St. Paul 7 per cent. bonds, with authority to sell the same at the brokers' board, or at public or private sale, or
122 otherwise, at its option, on the non-performance of this promise, without notice.

"B. STARR MIDGELEY."

[90c. int. rev. stamps.]

The copy-note just given is copy of the note given in renewal of the note of October 5th, 1869, which latter, however, we did not surrender. This note of October 5th, not surrendered, reads as follows:

"$1,600.] NEW YORK, *5th Oct.*, 1869.

"Two months after date I promise to pay to the order of Anthony Halsey, cashier, sixteen hundred dollars, at Tradesmen's National Bank, value received.

"B. STARR MIDGLEY.

"No. Due 8th Dec."

[80c. int. rev. stamps on back.]

These bonds referred to we received from B. S. Midgley in person at the times stated. At the time these bonds were so received there was no paper or document attached to them. Upon opening each of these bonds, which I now do, I find attached thereto by a pin a coupon; these coupons were detached from the bonds by me for the purpose of collecting the money on the two coupons. They were presented to the company for payment.

On the back of these bonds I find three blank columns, headed, re-

spectively, "Date of transfer," "To whom transferred," "Attest by transfer agent," with the figures, below the column "Date of transfer" "186," all three said columns being blank, as follows :

Date of transfer.	To whom transferred.	Attest by transfer agent.
186 .		

123 At the time of the said transactions with said B. S. Midgley, and prior thereto, the said Migdley was, and had been, a dealer in the Tradesmen's National Bank.

Cross-examined by plaintiff's counsel :

I do not know that Midgley was doing any business at that time; he had previously been in the cloth business and failed, I believe.

X Q. 1. Did you understand him to be insolvent?

A. I didn't know anything about his means at all; he kept a small account here—quite a small account.

The interest of the defendants, "The Tradesmen's National Bank" in these bonds (2070 and 2425) is, I think, $1,791.75, the amount of the note first above copied, with interest from February 4th, 1870.

X Q. 2. Did you, at the time of receiving these papers—these bonds—observe the particulars to which you have just now referred, namely, the three columns in blank, on the back of the bond, headed respectively "Date of transfer," "To whom transferred," "Attest by transfer agent;" or, is that something which you have observed since?

A. I examined each part of the bond, but it is so long ago that I cannot now say whether I examined these particular columns.

X. Q. 4. Then you didn't mean to allege that you did see them?

A. I say that I cannot say, now; it is so long ago. This bond (referring to one of the bonds in suit) is 21 inches long and 18 inches wide; it is folded, first, from top to bottom, then from side to side, and again from top to bottom.

X Q. 6. When you first open it what is the first thing you see?

A. A blank page; perfectly blank.

X Q. 7. Is it "perfectly" blank?

A. Well, there is printing there, of course, but we call that a blank page.

X Q. 8. Do you mean to say that the first thing you see on opening it is a blank page?

A. I mean to say that nine out every ten people who would open it——

X Q. 9. (Interrupting.) When you first unrolled the paper didn't you come to that page with three blank columns, headed respectively

124 "Date of transfer," "To whom transferred," "Attest by transfer agent?"

A. Yes.

X Q. 10. Did you disregard that when you took the bonds?

A. I presume I did.

X Q. 11. You didn't see whether the bonds had been transferred, or whether it was attested by the transfer agent?

A. I did, to see that there was no writing there. If there had been any handwriting there I should have observed it. I mention this because it is the custom to observe any handwriting on bonds or anything of that sort. I am unable to say when I last saw Mr. Midgley. I do not know where he is. The defendant, "The Tradesmen's National Bank," has never collected anything on these securities. We presented those coupons to the company, who declined to pay them. I first heard of Mr. Hotchkiss' claim in suit here, somewhere about the first of February, when Mr. Hotchkiss came here and made some inquiries—asked whether we had any Milwaukee and St. Paul Railway Co. bonds. My impression, or recollection, is, that Mr. Hotchkiss mentioned Midgley's name in connection with them. That led me to investigate the matter, and I found we had two bonds which agreed with those that he mentioned as his property; and then he mentioned this fact of those bonds having been stolen from him; that was the first intimation I ever had of anything being wrong with the bonds.

(Latter portion objected to by plaintiff's counsel.)

X Q. 12. Have you had any such securities before or since?

A. We have had other Milwaukee bonds at another time. I should think we had some scrip with them; am not sure. It was since this transaction in bonds 2070 and 2425. The difference between these bonds (2070 and 2425) and those which we have since had, referred to above, is, that on the latter there were attached a small piece of paper—I suppose what is called "scrip"—mentioning the name of the party who was the owner; no transfer endorsed upon the back, nor was there anything on the back. I called the attention of the party to whom
125 we loaned the money to the fact that the bonds were not good in their hands, by the terms of that scrip. In that instance we did not get any transfer; we simply made a loan to a party who kept an account with us, upon this bond.

X Q. 13. When, in these bonds now produced, Nos. 2070 and 2425, you read these words, "The said company also agree to make the scrip preferred stock attached to this bond, full paid stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond, and the unmatured interest on it," what remark did you make to Midgley?

A. The first time I read that was when Mr. Hotchkiss came here himself. I never read that bond at all.

X Q. 14. Did you make a loan upon the faith of a folded paper, which you did not read?

A. No, sir; upon the faith of a coupon bond, payable to bearer; I didn't read that clause.

X Q. 15. You made your loan, then, on the faith of the first sentence of this security, did you?

A. Yes, sir; "payable to bearer."

X Q. 16. All the intermediate part, between the first sentence and the coupons, you overlooked entirely?

A. Yes, sir; didn't read it.

ANTHONY HALSEY.

Subscribed and sworn to before me, this 3d day of January, 1871.

R. E. STILWELL,
Special Examiner, &c.

Adj'd to Wednesday, 4 Jan'y, 1871, at 11 o'c'k.

(Endorsed:) Cir. c't U. S., s. d't N. Y. Charles B. Hotchkiss vs. The National Shoe and Leather Bank & al., def'ts proofs on the part of Nat'l Tradesman's Bank. Smith & Woodward, solictors. Filed March 30, 1871.

126, 127

U. S. circuit court.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE & LEATHER BANK & AL. } New York, Ja'y 13, 1871.

NEW YORK, *January 13th*, 1871.

Present, H. N. Beach, esq., counsel for Shoe and Leather Bank; F. N. Bangs, esq., of counsel for plaintiff.

JOHN M. CRANE, sworn and examined as a witness on behalf of the defendants, The National Shoe and Leather Bank, testifies as follows, viz: I am cashier of the National Shoe and Leather Bank, and have been such cashier five years, about. As such cashier I have a bond in my possession of the Milwaukee and St. Paul Railway Company, which I now produce. (Witness produces the same paper heretofore produced by the counsel for the National Shoe and Leather Bank, a copy of which was marked as an exhibit,) and the number of it is 1947. The bank first re'eived that bond about the 20th of February, 1869, from Mr. Midgeley, of the firm of Waterhouse, Midgeley & Co. Mr. Midgeley asked me if I could make him a loan on a first-mortgage bond of a railway company. I asked him "what railroad company;" he said "Milwaukee and St. Paul." I asked him how much he wanted on it; said he, "$800.00." "What are the bonds worth?" "About 92." Said I "You can bring the bond in with you and I will look it; I guess I can accommodate you." I then telegraphed to Wall street by our instrument here, to the clearing-house, for the late quotation of these bonds; they replied "92." Either that day or the next day I gave Waterhouse, Midgeley & Co. $800.00, taking that bond as collateral security to their note. That note was renewed several times, and it has never been paid. I have the last note that was given by Waterhouse, Midgeley & Co., upon that loan; that note has never been paid; it is dated the 5th of October; due on the 8th of December, 1869. Waterhouse, Midgeley & Co. were dealers with this bank, and this loan was made in the regular course of business. The bond is in precisely the same condition as when we first made a loan on it, with the exception of two coupons which
128 have been detached; those coupons were numbered; I have on of them, numbered 15; the one prior to that was numbered 14. I have number 15 in my possession, separated from the bond. Mr. Midgeley took off coupon number 14, upon a renewal of the loan. There was not any scrip certificate attached to that bond when it first came into my possession. I have never seen any scrip certificate purporting to appertain to that bond. When the bond was handed me I noticed the signature, "I. Seymour," who was one of the trustees, a signature with which I was very familiar. He was cashier of one of the Wall-street banks at one time. I then opened the bond, saw that it was a first-mortgage bond of the Milwaukee and St. Paul Railway Co., payable to bearer, coupons attached; looked to see if the coupons were all there. That is about all the examination I made of it. I had never dealt in similar bonds before of that company. My attention was not called to the pro-

viso in the bond in relation to the scrip preferred stock, until after I had put it into the hands of a broker for sale. I think my attention was first called to it by the broker himself, after he had offered it for sale; that was a few days after the maturity of this last note; I should say about the 15th of December, 1869, in that neighborhood. I gave them a few days' time to pay the note. The bond is not all engraved; there is a mark of a pen; there is an alteration of the date in 1862 to 1863 in red ink, making it 1863; in connection with the words payable "in the city of New York, with interest thereon from the first day of July, A. D., 1862," original. It was engraved and printed that way, and altered with red ink so as to read 1863. That alteration occurs more than once; it occurs in the same way again twice; altering 1862 so as to read 1863; wherever the year 1863 appears in that bond, it has been altered from 1862 to 1863, by alteration of the figure "2" to a "3" with a pen. May 6th is inserted in the first blank in red ink in connection with the words "and the bearer hereof is entitled to the security derived from a mortgage or deed of trust, executed and delivered by said company to Isaac Sey-
129 mour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises, and immunities, dated May 6th, A. D., 1863."

Q. 41. And then again the date of the bond?

A. Yes, sir, the 6th of May; one place May 6th, and the other the 6th of May.

Q. 42. Look at that side of the bond and state what is printed on that side?

A.

Date of transfer.	To whom transferred.	Attest by transfer agent.
186		

There are a dozen or more of ruled lines; underneath are ruled lines in blank; there is no memorandum or writing upon it there, excepting the printed figures 186.

Cross-examined by counsel for plaintiff:

The capital of the Shoe and Leather Bank is one million of dollars at present. It is a part of my business to see that it is constantly employed profitably. It is employed in loans upon securities, and discounting of notes, and other evidences of debt of some kind. We have a great quantity of securities and evidences of debt constantly passing through our hands; they passed through my hands, many of them. My business is chiefly transacted between the hours of 10 and 3; there are intervals between 10 and 3 o'clock when I am not occupied in business of that nature—that is, making loans, examining securities, or winding up transactions consisting of loans and discounts. The intervals are brief, but sometimes they are frequent. They are occupied in the general supervision of the interest of the bank. It is not my habit to discount commercial paper simply upon examina-

tion of the back of it. I do not confine my examination to com-
130 mercial paper offered to me for discount to the margin of it. My examination in that line is generally extensive enough to see who are the drawers and endorsers. I very seldom read notes. I am very familiar with the character and form of promissory notes; generally look at the date of it, the time it is to run, and the amount and signature, and endorsers. A promissory note, besides those particulars, contains some other things, the usual form "I" or "We promise to pay." I don't know that I ever saw an evidence of debt issued by the Austrian government. I don't think I ever saw an English consol. If such a security as that—an English consol—or an evidence of debt issued by the Austrian government, was brought to me as security for a loan, folded up, I might, as a matter of curiosity, open it and read it, hardly otherwise, for the simple reason that I would judge of the value of its genuineness. If you brought me a paper folded up, endorsed on the back in such a way as to indicate that it was an English consol or an evidence of debt issued by the Austrian government, I think I should unfold it and probably glance over it. I might read every word of it; but I hardly think I would. According to my usual method of doing business I would not. In loaning money on it we would be governed very much by both the faith of the person offering it and on the faith of my reading the contents. In this instance I did not read the papers all through. I loaned money upon that bond—upon the bond that I believed to be a first mortgage, payable to bearer, and coupons attached of the Milwaukee and St. Paul Railway Company. I did not loan money on the security of the printed endorsement on the back. I opened the bond and read, as it seemed to me, sufficiently far to convince me that it was a negotiable bond, as I say. The coupons were there. We generally look to see that the coupons are there, not as evidence that it would be paid, but I looked and saw the signature; that I knew very well indeed. I loaned on the bond, believing it to be a perfectly legiti-
mate negotiable security; good for the amount. I did not read
131 the bond entirely through. I loaned the money upon what I had every reason to believe was a first-mortgage bond, worth in the market 92, as I believed their quotation in Wall street.

Q. 78. Did you lend it upon your belief of what it was, instead of an ascertainment of it' contents?

A. Partially both. I had ascertained that it was a bearer's bond; a bond drawn to bearer; that it had coupons attached, drawn to bearer; those coupons were intact up to that time; that it was a 7 per cent. bond.

Q. 81. Then did you lend your money upon those clauses of the bond, which specified that it was payable to bearer, and upon coupons, and guess at the remainder of the bond?

A. I didn't particularly guess at it. From the examination which I gave the bond I was satisfied in my mind that it was perfectly good security for the amount loaned.

Q. 82. Did you lend your money upon what you believed the paper contained or upon what you had ascertained it to contain upon an actual reading?

A. Partially from both. I saw and read enough to satisfy me that it was a genuine bond, and I had previously ascertained that bonds of that description were worth ninety-two. I had ascertained that by telegraphing to Wall street. I telegraphed for quotation of first-mortgage coupon-bond of the Milwaukee and St. Paul Railway Company. I cannot say that is the exact language. I am not certain whether or

not my dispatch contained the word "convertable." I did not read the whole of the endorsement on the back. I am not sure that I read the words "seven per cent. convertable." I saw that it was a mortgage-bond. My attention was particularly called, or rather I was particularly struck, with the signature of Mr. Seymour. I could not say whether I read the words "seven per cent. convertable." I cannot say whether I disregarded that word as to what idea those words conveyed to my mind; I don't know that they had any particular meaning. I don't know that it conveyed anything to my mind. I saw that it was a coupon 7 per cent. bond; those words "seven per cent. convertable" on a bond would not indicate to me that it was a bond bearing seven per cent. interest, which bond might be convertable into stock. I would find out whether that idea was correct by reading the bond. I did not read it for that purpose. I did not ascertain whether it was or not convertable.

132

Q. 97. Do you mean to say that you have ever ascertained that this paper or any like paper, without any scrip attached, is worth in the market ninety-two or any other sum?

A. All I can say is that I telegraphed to Wall street for the price of Milwaukee railway bonds without any scrip attached to it. I don't think I described in the telegraph that it was a seven per cent. convertable bond, because in telegraphing we always use the shortest sentences that will answer the purpose, and I am not a practical operator, but I think I said, "Send quotation for first mortgage Milwaukee and St. Paul Railway bonds." I don't know that I omitted the word "convertable," but ye' I may; the word "convertable" has a signification to my mind. I did not read these words in the paper, "The said company also agree to make the scrip preferred stock attached to this bond full-paid stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock, upon surrender to the company in the city of New York," of this bond and the unmatured interest-warrants. I am not in the habit of reading a bond through and through. I never read a bond through in my life that I know of; it was from a general view of the bond and what I did read. I don't know that my omission to read that was from the force of habit. I did read papers offered to me for loans, to a certain extent.

Q. 106. Had it become habitual with you not to read papers of this description that were offered to you as securities for loans, but to content yourself with a partial examination?

A. I never read one through.

Q. 107. Then it was done in your ordinary course of business?

A. Yes, sir. I don't say that my ordinary course of business is not to inform myself of the contents of papers offered to me.

133

Q. 108. Is it your course of business to make yourself fully acquainted with the contents of the papers offered to you as security or is it not?

A. It is my habit, in the ordinary course of business, to acquaint myself, so far as possible, with the value of different securities that may be offered.

Q. 109. That don't answer my question. Is it your course of business for you to read through papers offered to you as securities for loans?

A. Not entirely through. In omitting to read this paper through I pursued my ordinary course of business. I suppose I had known Mr. Midgeley some 2 or 3 years at this time. We had had considerable dealings with him. I knew his partner, Mr. Waterhouse. I knew of

tion of the back of it. I do not confine my examination to com-
130 mercial paper offered to me for discount to the margin of it. My examination in that line is generally extensive enough to see who are the drawers and endorsers. I very seldom read notes. I am very familiar with the character and form of promissory notes; generally look at the date of it, the time it is to run, and the amount and signature, and endorsers. A promissory note, besides those particulars, contains some other things, the usual form "I" or "We promise to pay." I don't know that I ever saw an evidence of debt issued by the Austrian government. I don't think I ever saw an English consol. If such a security as that—an English consol—or an evidence of debt issued by the Austrian government, was brought to me as security for a loan, folded up, I might, as a matter of curiosity, open it and read it, hardly otherwise, for the simple reason that I would judge of the value of its genuineness. If you brought me a paper folded up, endorsed on the back in such a way as to indicate that it was an English consol or an evidence of debt issued by the Austrian government, I think I should unfold it and probably glance over it. I might read every word of it; but I hardly think I would. According to my usual method of doing business I would not. In loaning money on it we would be governed very much by both the faith of the person offering it and on the faith of my reading the contents. In this instance I did not read the papers all through. I loaned money upon that bond—upon the bond that I believed to be a first mortgage, payable to bearer, and coupons attached of the Milwaukee and St. Paul Railway Company. I did not loan money on the security of the printed endorsement on the back. I opened the bond and read, as it seemed to me, sufficiently far to convince me that it was a negotiable bond, as I say. The coupons were there. We generally look to see that the coupons are there, not as evidence that it would be paid, but I looked and saw the signature; that I knew very well indeed. I loaned on the bond, believing it to be a perfectly legiti-
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Q. 106. Had it become habitual with you not to read papers of this description that were offered to you as securities for loans, but to content yourself with a partial examination?

A. I never read one through.

Q. 107. Then it was done in your ordinary course of business?

A. Yes, sir. I don't say that my ordinary course of business is not to inform myself of the contents of papers offered to me.

133

Q. 108. Is it your course of business to make yourself fully acquainted with the contents of the papers offered to you as security or is it not?

A. It is my habit, in the ordinary course of business, to acquaint myself, so far as possible, with the value of different securities that may be offered.

Q. 109. That don't answer my question. Is it your course of business for you to read through papers offered to you as securities for loans?

A. Not entirely through. In omitting to read this paper through I pursued my ordinary course of business. I suppose I had known Mr. Midgeley some 2 or 3 years at this time. We had had considerable dealings with him. I knew his partner, Mr. Waterhouse. I knew of

the house of Waterhouse, Pearl & Company. Waterhouse, of Waterhouse, Midgeley & Co., was not connected in any way with the Waterhouse of Waterhouse, Pearl & Company, that I know of. I could not say that I knew the reputation of Waterhouse, Pearl & Company. I did not know of any house that was reputed to be extensive dealers in stolen bonds. Since this suit was commenced I have not been in the habit of reading through bonds that have been offered to me as securities for loans. I have not varied my habit at all. I suppose that I could not now avail myself, being the holder of this paper, of the clause in it which you have just read, if I wished to do so. I suppose that I could not avail myself of the convertable feature of it. I have so supposed from the time that I first read the bond entirely through. If I had read through the clause which you have read, I should have supposed that the convertable portion of the bond was of no value.

Q. 110. Then, in fact, it is not a convertable bond in its present shape, is it, as you understand it?

(Objected to.)

A. That is my understanding.

Q. 111. What is it, if that clause is good for nothing? Will you state what clauses in it are, as you understand it, good for something?

A. I understand that a $1,000 coupon-bond, payable to bearer, and without that clause, it does not give us the privilege of converting it into stock.

Q. 112. I ask you to specify what clauses you consider good for something?

134 A. Where it pledges the property for security of the bond.

Q. 113. Read that.

A. "Know all men by these presents that the Milwaukee and St. Paul Railway Company are indebted to Isaac Seymour, Horace Galpen, William Gould, Fred. P. James, D. M. Hughes, George Smith, and Francis Vose, citizens of the State of New York, or bearer, in the sum of $1,000, for the purchase-money of their entire corporate property, which sum said company promises to pay to the bearer hereof, on the 1st day of January, A. D. 1893, at the office or agency of the company in the city of New York, with interest thereon from the first day of July, A. D. 1863, at the rate of 7 per centum per annum, payable semi-annually, at its office or agency in the city of New York, on the 1st days of January and July in each year, on the presentation and surrender of the annexed coupons, as they severally become due; and in case of non-payment of interest for 6 months, then, without demand or notice, the principal of this bond shall become due and payable." I understand that is of value; and, also, "this bond is one of a series of bonds amounting to $2,200,000;" and the words following, "that the residue of the bond," I consider all of value. I have not tried to sell those words in the bond, separated from the rest. I think that that convertable privilege is worth something. I don't think the bond is worth as much without the privilege. I think it is a good bond anyway.

J. M. CRANE.

Subscribed and sworn to before me, this 10th February, 1871.

R. E. STILWELL,
Examiner, &c.

FRIDAY, *February 24th*, 1871.

Present, counsel.

Redirect examination of John M. Crane:

Q. 114. You say you wish to explain as to the time of discounting the

first note, which, in your direct examination, you say was on the
135 20th February, 1869; and in the answer to the original bill a different date is given. How is that?

A. I confounded the date of the final discount with the date of the final renewal. The date of the original discount was February 0th, 1869, which fell due and was renewed in April.

Q. 115. At the time of the application for discount of the original note did Mr. Midgeley show you the bond in question?

A. He did not.

Q. 116. At the time you telegraphed to ascertain the value of the bond in question had you seen the bond?

A. I had not.

Q. 117. Did you at that time know that the bond in question was a convertable bond?

A. No, I did not.

Q. 118. What is your best recollection as to the time when you first ascertained its convertability?

A. After the making of the last note given in renewal of the original discount.

Q. 119. When did you first learn or hear of the alleged loss of the complainant, and that he claimed the bond in question?

A. Several days after the making of the last note.

Q. 120. From whom did you first learn of his claim?

A. From Mr. Hotchkiss himself.

Q. 121. Produce the original note and annex a copy.

A. I have done so and the copy is hereto annexed marked Exhibit No. 1, February 24th, 1871, R. E. S., examiner, &c.

J. M. CRANE.

Subscribed and sworn to before me this 24th February, 1871.

R. E. STILWELL,
Examiner, &c.

EXHIBIT NO. 1.

NEW YORK, *5th October*, 1869.

$860. Two months after date we promise to pay John M. Crane, esq., cashier, or order, at the National Shoe and Leather Bank, New York City, eight hundred dollars for value received, having deposited as collateral security for the payment of this note,

One Saint Paul and Milwaukee Railroad bond, No. 1947.,

136 And we hereby give to said John M. Crane or his assigns full power and authority to sell said collateral security, or such security as may be given in exchange for said collateral, or any part or portion thereof, at the board of brokers, in the city of New York, or at public or private sale at the option of said John M. Crane or his assigns on the non-performance of the above promise, or at any time thereafter, and without advertising the same or otherwise giving to us any notice, and to apply the proceeds of said collateral security to the payment of this note, and all interest due thereon, together with all expenses attending the sale; and accounting to us for the surplus, if any. And in case the proceeds thereof shall be insufficient to pay the principal, interest and expenses as aforesaid, we promise to pay to said John M. Crane or his assigns the amount thereof forthwith after such sale, with interest.

Dated December 8th, 1869.

WATERHOUSE, MIDGLEY & Co.

[Internal revenue-stamp, 40 c., cancelled.]

Copy. Exhibit No. 1. Feb'y 24, 1870. R. E. S., examiner, &c.

(Endorsed :) Circuit ct. U. S., south dist. of New York. Charles B. Hotchkiss vs. The National Shoe & Le ather Bank. Def't's proofs. Filed March 24, 1871.

137 U. S. circuit court.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE & LEATHER BANK, ET AL.

We consent that the annexed paper may be substituted for the paper now appearing as Exhibit 6, among the proofs in this cause.
Dated Dec'r 3, 1872.

BEACH & BE MAN,
Solr's of above-named Deft's.
C. W. BANGS, *Pl'ff's Solt'r.*

EXHIBIT 6.

Certificate for scrip preferred stock.

No. 1947.] Nov. 2d, 1863. [Ten shares.

Countersigned by John P. Yelverton, registrar of transfers.
Shares $100 each, on which $1 per share has been paid.
This is to certify that Russell Sage, of New York, is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of
138 association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage bond No. 1947 of the company, and all unmatured coupons thereon, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said Russell Sage is entitled to receive ten shares of said full-paid preferred stock.
This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.
This certificate, and the stock represented hereby, is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.
In witness whereof the company have caused this certificate to be signed by the president.

D. M. HUGHES,
President.

H. E. GLASFORD,
Transfer Agent.

[Internal revenue stamp, 25 cents, cancelled.]

(Endorsed on back :)

139 Know all men by these presents, that for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto

shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for , and in name and stead, but to use, to sell, assign, transfer and set over, all or any part of said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In witness whereof have hereunto set hand, this day of , one thousand eight hundred and sixty.

RUSSELL SAGE.

Signed and delivered in presence of
JA'S G. DEMOTT.

(Endorsed:) U. S. circuit court. Charles B. Hotchkiss vs. The National Shoe & Leather Bank & al. Consent as to Ex't No. 6.

140 SOUTHERN DIS'T OF NEW YORK,
City & County of New York, ss:

Russell Sage, being duly sworn, deposes and says that the printed paper hereto prefixed, the written date No. 2, 1863, being inserted over an erasure of the printed date, Jan. 2d, 1864, & the figures 1947 being substituted for the printed figures 2070, is a true and correct copy of the certificate of scrip preferred stock produced by me upon my examination as a witness in this cause, and of the printed endorsement theron.

RUSSELL SAGE.

Sworn before me Dec'r 5th, 1872.
[L. S.]

W. B. NASSAU,
Notary Public, N. Y. Co.

141 U. S. circuit court.

CHARLES B. HOTCHKISS
ag't
THE NATIONAL SHOE AND LEATHER BANK ET AL.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frances N. Bangs, being duly sworn, deposes and says: That on or about May twenty-second (22d) eighteen hundred and seventy-two, (1872,) an order was made and entered in this cause authorizing and directing the filing as an exhibit number 7½ in this cause, of an original paper mentioned in said order; that in the equity register of this court is an entry in the docket of this cause stating the filing of said exhibit; that this cause came on to be heard on December third, (3d,) eighteen hundred and seventy-two, (1872;) that as the clerk did not bring into court the said exhibit, although the other papers in the cause were brought into court by the clerk, deponent enquired of the deputy clerk, R. E. Stilwell, esq., where said exhibit was, and was informed by Mr.
142 Stilwell that said exhibit had been mislaid, and could not be found. Deponent further says, that before said original exhibit 7½ was filed as aforesaid, a copy thereof was made under the personal direction and supervision of deponent, and the papers hereto annexed

(Endorsed :) Circuit ct. U. S., south dist. of New York. Charles B. Hotchkiss vs. The National Shoe & Leather Bank. Def't's proofs. Filed March 24, 1871.

137 U. S. circuit court.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE & LEATHER BANK, ET AL.

We consent that the annexed paper may be substituted for the paper now appearing as Exhibit 6, among the proofs in this cause.
Dated Dec'r 3, 1872.

BEACH & BEMAN,
Solr's of above-named Deft's.
C. W. BANGS, *Pl'ff's Solt'r.*

EXHIBIT 6.

Certificate for scrip preferred stock.

No. 1947.] Nov. 2d, 1863. [Ten shares.

Countersigned by John P. Yelverton, registrar of transfers.
Shares $100 each, on which $1 per share has been paid.
This is to certify that Russell Sage, of New York, is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of
138 association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage bond No. 1947 of the company, and all unmatured coupons thereon, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said Russell Sage is entitled to receive ten shares of said full-paid preferred stock.
This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.
This certificate, and the stock represented hereby, is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers.
In witness whereof the company have caused this certificate to be signed by the president.

D. M. HUGHES,
President.

H. E. GLASFORD,
Transfer Agent.

[Internal revenue stamp, 25 cents, cancelled.]

(Endorsed on back :)

139 Know all men by these presents, that for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto

shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for , and in name and stead, but to use, to sell, assign, transfer and set over, all or any part of said scrip stock, and for that purpose to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

In witness whereof have hereunto set hand, this day of , one thousand eight hundred and sixty.

RUSSELL SAGE.

Signed and delivered in presence of
JA'S G. DEMOTT.

(Endorsed:) U. S. circuit court. Charles B. Hotchkiss vs. The National Shoe & Leather Bank & al. Consent as to Ex't No. 6.

140 SOUTHERN DIS'T OF NEW YORK,
City & County of New York, ss:

Russell Sage, being duly sworn, deposes and says that the printed paper hereto prefixed, the written date No. 2, 1863, being inserted over an erasure of the printed date, Jan. 2d, 1864, & the figures 1947 being substituted for the printed figures 2070, is a true and correct copy of the certificate of scrip preferred stock produced by me upon my examination as a witness in this cause, and of the printed endorsement theron.

RUSSELL SAGE.

Sworn before me Dec'r 5th, 1872.
[L. S.]

W. B. NASSAU,
Notary Public, N. Y. Co.

141 U. S. circuit court.

CHARLES B. HOTCHKISS
ag't
THE NATIONAL SHOE AND LEATHER BANK ET AL.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frances N. Bangs, being duly sworn, deposes and says: That on or about May twenty-second (22d) eighteen hundred and seventy-two, (1872,) an order was made and entered in this cause authorizing and directing the filing as an exhibit number 7½ in this cause, of an original paper mentioned in said order; that in the equity register of this court is an entry in the docket of this cause stating the filing of said exhibit; that this cause came on to be heard on December third, (3d,) eighteen hundred and seventy-two, (1872;) that as the clerk did not bring into court the said exhibit, although the other papers in the cause were brought into court by the clerk, deponent enquired of the deputy clerk, R. E.

142 Stilwell, esq., where said exhibit was, and was informed by Mr. Stilwell that said exhibit had been mislaid, and could not be found. Deponent further says, that before said original exhibit 7½ was filed as aforesaid, a copy thereof was made under the personal direction and supervision of deponent, and the papers hereto annexed

is the copy so made, which copy hereto annexed was by deponent, at the time, compared with the original of said exhibit 7½; and the paper hereto annexed is a true and correct copy of the said exhibit 7½, and of the whole of the same.

F. N. BANGS.

Sworn to before me this 5th day of December, 1872.
[L. S.] W. B. NASSAU,
Notary Public, N. Y. Co.

[25-ct. U. S. rev. st. cancelled.]

Countersigned by register of transfers.
Shares $100, each on which $1 per share has been paid.

Certificate for scrip preferred stock.—Issued Dec. 23d, 1863.

No. 7086.] [Vignette.] [Ten shares.

This is to certify that F. P. James & Co., of New York, is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as "scrip preferred stock" in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage-bond No. 1947 of the company, and all unmatured coupons thereon, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said F. P. James & Co. is entitled to receive ten shares of said full paid preferred stock.

144 This stock is transferable only on the books of the company at their office, in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate and the stock represented hereby is issued and received subject to all the terms, conditions, and limitations of this company, and by the registrar of transfers.

In witness whereof the company have caused this certificate to be signed by the president.

D. M. HUGHES, *President.*
H. E. GLASFORD,
Transfer Agent.

(Cancelled:)

(Endorsed:)

7086. Know all men by these presents, that for value received have bargained, sold, assigned, and transferred, and by these presents
145 do bargain, sell, assign and transfer unto
shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over all or any part of the said scrip stock, and for that purpose, to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue thereof.

In witness whereof have hereunto set hand this day of one thousand eight hundred and sixty

F. P. JAMES & CO.

Signed and delivered in presence of—
JAS. G. SMITH.

[25 cts. U. S. rev. stamp cancelled.]
Exhibit R. E. S., examiner, &c.

146 (Endorsed:) U. S. circuit court. Charles B. Hotchkiss agt. The National Shoe & Leather Bank, et. al. Affidavit of Francis N. Bangs, counsel for plaintiff. C. W. Bangs, pl'ff's sol'r.

We consent that this paper may be filed as Exhibit No. 7½ in this cause, in case the original Exhibit 7½ shall not be found before the decision of the cause.

BEACH & BEMAN,
Sol'rs for Def'ts.

147 U. S. circuit court.

CHARLES B. HOTCHKISS
against
THE SHOE & LEATHER BANK ET AL.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

FRANCIS N. BANGS, being duly sworn, deposes and says that the testimony in this cause was taken in writing between the months of December eighteen hundred and seventy, (1870,) and February, eighteen hundred and seventy-one, (1871,) and that after the taking of the written depositions, deponent caused the testimony and pleadings to be printed; and deponent supposed that the same were accurately printed.

That several months ago, deponent was informed in general terms, that there were some errors in the printed copies which deponent had caused to be prepared; but that deponent's attention was not called to any substantial variances between the written testimony and the printed evidence, until Thursday, March seventh, (7,) eighteen hundred
148 and seventy two, (1872,) when deponent compared some portion of the printed evidence with the written exhibits, in company with Henry W. Beach, esq., counsel for the Shoe & Leather Bank; and it then appeared that Exhibit six (6) in the testimony was not correctly printed, in that some erasures and alterations which appeared upon the face of Exhibit six (6) were not produced in the printed testimony.

Deponent further says that Exhibit six (6) forms a part of the testimony of the witness Russell Sage, and that in the deposition of Mr. Sage it is stated that he, the said Mr. Sage produced a certain original certificate of stock, marked Exhibit six, (6,) but that it is apparent, upon an inspection of Exhibit six (6) as contained in the written testimony, and as identified by the examiner, that the same is not an original paper, but is a copy of some other paper. And other exhibits which are contained in the written testimony, although spoken of in the testimony as originals, appear to be, in fact, copies. And deponent accounts for the fact of copies being introduced instead of the originals, by the inference and presumption which deponent himself has, that by the tacit
149 or expressed consent of counsel given at the time of taking the testimony, copies were to be used in lieu of originals.

Deponent further says that Exhibit six (6) as contained in the written

testimony, not only seems to be a copy, but as deponent believes, it is an incorrect copy of the original; that the original of said Exhibit six (6) is a certificate for scrip preferred stock issued by the Milwaukee & St. Paul Railway Company; that on the eleventh (11) day of March, eighteen hundred and seventy-two (1872) deponent in company with John S. Woodward, esq., counsel for the defendant, The Tradesman's Bank, went to the office of the defendant, The Milwaukee & St. Paul Railway Company, and had an interview with James M. McKinlay, esq., the transfer agent of said company, upon the subject of the original of said Exhibit number six, (6,) and said McKinlay informed deponent and Mr. Woodward that the fact was that the said McKinlay was present at the time of the taking of the deposition in this case, and that at that time the original of Exhibit number six (6) was searched for by him, Mr. McKinlay, and could not be found, and that the fact that the same could not be found was then stated by him, and that it was agreed that a copy thereof should be used; but that the copy
150 marked number six (6) and used in the exhibits is in fact an incorrect copy of the original. Mr. McKinlay also produced and showed to deponent and to Mr. Woodward, and the paper hereto annexed, which appears marked upon the back thereof as an exhibit by the examiner, but which, in fact, does not appear among the testimony in this cause, was on the files of this court.

And deponent is unable to explain the reason why said exhibit hereto annexed was not filed with the exhibits in this cause, except by the fact that the deposition of Russell Sage was taken at the office of the Milwaukee & St. Paul Railway Company, and said paper hereto annexed, marked number seven thousand and eighty-six (7086) was by inadvertence left at the office of said company.

Deponent further says that for the purpose of correcting the error in copying Exhibit number six, (6,) and the error in the omission from the testimony of the paper hereto annexed, being scrip certificate number seven thousand and eighty-six, (7086,) and in order to inform the court fully of the facts in this case, he believes that it is necessary that additional testimony should be taken in this cause, to wit, the testi-
151 mony of James M. McKinlay, the transfer agent of the Milwaukee & St. Paul Railway Company; and he prays that said James M. McKinlay may be orally examined in open court before the judge thereof, upon the hearing of this case, or that the proofs may be opened to enable deponent to take the testimony of James M. McKinlay as a witness in the cause, and to enable the defendants to produce such further testimony as in their judgment the evidence to be given by the said James M. McKinlay may render it necessary or desirable for them to produce.

F. N. BANGS.

Sworn to before me this 12th day of March, 1872.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

GENTLEMEN: You will please to take notice that upon the pleadings and proceedings in this action, and upon the affidavit, of which a copy is herewith served upon you, I shall move this court, before his honor, Judge Blatchford, sitting in the court-room of the district court, on Saturday, March 16, 1872, at eleven o'clock in the forenoon of that
152 day, or as soon thereafter as counsel can be heard, for an order so far opening the proofs in this cause as to permit the plaintiff

to take the deposition of James M. McKinley upon the points mentioned in the foregoing affidavit; or for such further or other or different rule or order as may be proper in the premises.

Dated March 13, 1872.

Yours, &c.,

C. W. BANGS, *Sol'r for Pl'ff.*

To BEACH & BEMAN,
Sol'rs for D'f'ts, The Shoe & Leather Bank.

(Endorsed:) U. S. circuit court. Charles B. Hotchkiss ag't The Shoe and Leather Bank, & al. Affidavit of C. W. Bangs.

Service of a copy of the within is admitted this M'ch 13, 1872.

BEACH & BEMAN,
Sol'rs for Shoe & L. Bank.

Hearing of within motion adjourned by consent to Saturday, March 23, 1872, at 11 a. m., before Judge Blatchford.

Dated March 16, 1872.

BEACH & BEMAN.
pr. WOSTT.

153 Countersigned by John S. Jehuh, registrar of transfers. Cancelled.

Shares $100 each, on which $1 per share has been paid.

Certificate for scrip preferred stock.—Issued Dec. 23d, 1863.

[Twenty-five cent internal revenue stamp cancelled.] [P. W. O.

No. 7086.] [Figure.] [Ten shares.

This is to certify that F. P. James & Co., of New York, is entitled to ten shares of the capital stock of the Milwaukee & St. Paul Railway Company, designated as "scrip preferred stock," in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate and mortgage bond No. 1947 of the company, and all unmatured coupons thereon, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of this company, the said F. P. James & Co. is entitled to receive ten shares of said full paid preferred stock.

This stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.

This certificate, and the stock represen' thereby, is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of
154 the company, and by the registrar of transfers.

In witness whereof, the company have caused this certificate to be signed by the president.

D. M. HUGHES, *President.*

H. E. GLASFORD, *Transfer agent.*

(Written across the face and over the signatures:) Cancelled. Cancelled. Cancelled. Cancelled.

(Endorsed:) Know all men by these presents, that for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the said company, and hereby constitute and appoint true and lawful attorney, irrevocably for and in name and stead, but to use, to sell, assign, transfer, and set over, all or any part of the said scrip stock, and for that purpose, to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof.

, In witness whereof, have herewith set hand , this day of one thousand eight hundred and sixty .

Signed and delivered in presence of—

JAS. S. DERMOTT.

F. P. JAMES & Co.

[25-cent int. rev. stamp, cancelled.]

Exhibit 7½, R. E. S., examiner, &c.

155 At a stated term of the circuit court of the United States for the southern district of New York, held at the court-rooms thereof, May 11, 1872—present, Hon. Samuel Blatchford, j.

CHARLES B. HOTCHKISS
vs.
THE SHOE & LEATHER BANK & AL.

On motion of F. N. Bangs, of counsel for the plaintiff, Henry N. Beach, esq., appearing for the defendant The Shoe & Leather Bank, and not opposing, ordered that the papers hereto annexed, marked Exhibit 7½, be filed with the proofs in this cause as a part of the plaintiff's testimony, as the original certificate No. 7086, referred to in the deposition of Russell Sage, so far as the defendant The National Shoe & Leather Bank is concerned.

SAM'L BLATCHFORD.

Form of above order approved.

H. N. BEACH,
Att'y for Def't Nat. Shoe & L. B'k.

156 (Endorsed:) U. S. circuit court. Charles B. Hotchkiss ag'st The Shoe & Leather Bank et al. Affidavit and order. C. W. Bangs, pl'ff's att'y, 137 B'way, N. Y. Filed May 20, 1872.

157 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 3d day of December, in the year of our Lord one thousand eight hundred and seventy-two—present, the honorable Samuel Blatchford, circuit judge.

CHARLES B. HOTCHKISS
vs.
THE NATIONAL SHOE AND LEATHER BANK & al.

The above-entititled cause coming on for final hearing upon pleadings and proofs—

Mr. F. N. Bangs is heard in behalf of the complainant.

H. N. Beach is heard in behalf of the Nat'l Shoe & Leather Bank. Mr. Woodward is heard in behalf of the Tradesman's Nat. Bank. Mr. Bangs is heard in reply.

Cur. adv. vult.

160 CHARLES B. HOTCHKISS *vs.* THE TRADESMEN'S NATIONAL BANK, THE National Shoe and Leather Bank of the city of New York, and The Milwaukee and St. Paul Railway Company. } In equity.

The mortgage-bond of a railroad corporation, bearing a number and payable to bearer, with coupons attached payable to bearer, contained, on its face, a statement that the corporation agreed "to make the scrip preferred-stock attached to this bond full-paid stock," at specified times, upon surrender to the corporation of the bond and the unmatured coupons, and it was issued in conformity with the articles of association of the corporation. H., the owner and possessor of such bond, was also the possessor of a certificate for ten shares of the scrip preferred stock of the corporation, certifying that he was entitled to such shares, and declaring, that, on the surrender of such certificate, and of such mortgage-bond, designated by its number, and of all unmatured coupons thereon, at specified times, he would be entitled to ten shares of full-paid preferred stock. The bond and the certificate of stock, attached together by a pin, were stolen from H. The bond, unaccompanied by the certificate went into the hands of T., who, in good faith, and without any other notice than was imported by the bond, advanced money on the bond: Held—

(1.) That T. had notice of whatever was contained in the articles of association, in respect to the bond.

(2.) That neither the articles, nor the bond, nor the certificate, required to be registered, or to be transferable solely on the books of the corporation, or that the debt evidenced by the bond and the coupons should be transferable otherwise than by delivery.

(3.) That H. could part with the bond by delivery, without transferring the scrip stock.

(4.) That the promise on the bond to pay money was a separate obligation from the agreement in regard to converting the scrip stock into full-paid stock.

(5.) That T. was entitled, as against H., to retain the bond, as having taken before maturity, for a valuable consideration, in the usual course of business, without notice of any defect of title, a coupon bond, payable to bearer.

(Before Blatchford, J., southern district of New York, January 22d, 1873.)

BLATCHFORD, *J:*

161 On the 30th of November, 1868, the plaintiff, at Bridgeport, Connecticut, was the owner and in possession of three bonds, for $1,000 each, issued by the Milwaukee and St. Paul Railway Company,

and numbered respectively 1947, 2070, and 2425. There were then annexed to each of the bonds 48 coupons or interest-warrants, each for $35, and payable each successive six months from and including the 1st day of January, 1869, to and including the 1st day of July, 1892. The bond and its coupons were all of them printed on the face of one and the same sheet of paper, and none of such 48 coupons had then been cut off. Bond No. 1947 read thus: "Know all men by these presents, that the Milwaukie and St. Paul Railway Company are indebted to Isaac Seymour, Horace Galpen, William Gould, Fred. P. James, D. M. Hughes, George Smith, and Francis Vose, citizens of the State of New York, or bearer, in the sum of one thousand dollars, for the purchase-money of their entire corporate property, which sum said company promise to pay to the bearer hereof on the first day of January, A. D. 1893, at the office or agency of the company in the city of New York, with interest thereon from the first day of July, A. D. 1863, at the rate of seven per centum per annum, payable semi-annually, at its office or agency in the city of New York, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons, as they severally become due, and, in case of non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable. The said company also agree to make the scrip preferred stock attached to this bond full-paid stock at any time within ten days after any dividend shall have been declared and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond and the unmatured interest-warrants. This bond is one of a series of bonds, amounting to $2,200,000, and, if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then this issue of bonds may be increased $2,000,000, and, if the company acquire the Milwaukee and Western Railroad, and
162 extend it from Columbus to Portage, then this issue may be increased $2,000,000, and if the company acquire the Milwaukee and Horicon Railroad, this issue of bonds may be increased $400,000. All of which bonds are executed and delivered in conformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors. And the bearer hereof is entitled to the security derived from a mortgage or deed of trust duly executed and delivered by said company to Isaac Seymour and N. A. Cowdrey, trustees, conveying the entire property of this company, real and personal, and all its rights, franchises and annuities, dated May 6th, A. D. 1863, and, also, to the benefits to be derived from a sinking fund established by and in said mortgage or deed of trust, of all such sums of money as are received from the sales of lands donated or granted to this company by the United States or by the State of Wisconsin. This bond shall not be valid until it shall have been authenticated by a certificate endorsed hereon, and duly signed by both of said trustees, or their or his successor or successors, and is issued, received and held subject to the terms and conditions contained in said mortgage. In witness whereof, the said company have caused their corporate seal to be hereto affixed, and their president and secretary to sign the same, this sixth day of May, A. D. 1863." On the face of the bond were the number of the bond, in two places, and, also, the words: "Sixty coupons attached. Last six months interest, $35, payable with bond," Each coupon was in this form: "The Milwaukee and St. Paul Railway Company promise to pay to the bearer, thirty-five dollars, on the first day of , 18 , in the city of New York, for interest due on bond No. 1947. Coupon No. . H. E. Glasford, agent." The blanks in the coupons were properly filled.

The face of the bond being uppermost, if the bond was folded over from right to left, by a fold in the middle of its width, and running from top to bottom, so as to bring one-half of the back of the bond
163 uppermost, the half was found to be divided, by two up and down lines, into three columns, each with a printed heading, the first column being headed, "Date of transfer," with the figures "186 " a short distance below, to the left, the second column being headed, "To whom transferred," and the third column being headed, "Attest by transfer agent;" and, in each column, were fourteen horizontal lines. There were no entries in any of these columns when the bond left the possession of the plaintiff, as hereafter mentioned

On the other half of the back of the bond were these words: "$1,000 bond, No. 1947. First mortgage, Milwaukee & S't Paul Railway Company. 7 per cent. convertible. Interest, January & July. Due, 1893. This is to certify that this bond is included in a first mortgage of the entire corporate property, real and personal, rights, franchises, and immunities, of the Milwaukee and S't Paul Railway Company, in trust to the undersigned, to secure the payment of $2,200,000; and, if the company acquire the road known as the Eastern Division of the La Crosse and Milwaukee Railroad, then it may be to secure the payment of $2,000,000 additional, and, if the company acquire the road known as the Milwaukee and Western Railroad, then it may be to secure the payment of $2,000,000 additional, and, if the company acquire the road known as the Milwaukee and Horicon Railroad, then it may be to secure the payment of $400,000 additional. I. Seymour, N. A. Cowdrey, trustees."

Bonds Nos. 2070 and 2425, when they left the possession of the plaintiff, as hereafter mentioned, read in the same way, and were in all respects, in the same condition, as to themselves, and the contents of their backs, and their coupons, with the proper changes of numbers, as bond No. 1947, except that bond No. 2425 contained the words "indebted to Isaac Seymour and N. A. Cowdrey," instead of the words "indebted to Isaac Seymour, Horace Galpen, William Gould, Fred. P. James, D. M. Hughes, George Smith, and Francis Vose."

164 The "articles of association of the company," referred to in the bonds, declare, in their third article, that the capital stock shall be divided into "preferred stock" and "common stock," and that a part of the "preferred stock" shall be known as "scrip preferred stock." On the scrip preferred stock one dollar per share is declared and acknowledged to have been paid. On the rest of the preferred stock, and on the common stock, one hundred dollars per share are declared and acknowledged to have been paid. The preferred stock is fixed at not exceeding $3,450,000, or 34,500 shares. The articles say: "Of the said $3,450,000 preferred stock, an amount not exceeding $2,200,000 at par, or 22,000 shares, shall be set apart and designated as "scrip preferred stock." The scrip preferred stock here named, or hereafter named, shall not at any time exceed the amount of outstanding mortgage bonds hereinafter named. The scrip preferred stock shall not be subject to any assessment, and shall entitle the person in whose name it stands upon our books to all the rights and privileges of other stockholders, except that it shall not entitle the holder to any dividend, or other profit or increase, from the income or assets of this company. It shall be issued in certificates of five and ten shares each, and shall accompany each mortgage bond of the company. The holder thereof shall have the right, at any time within ten days after any dividend shall have been declared and become payable on the preferred stock, to make the

scrip preferred stock attached to this bond full paid stock, upon the surrender to the company of the mortgage bond named by its number in his scrip certificate, and, upon surrendering said scrip certificate and bond, he shall be entitled to receive therefor the same number of shares of preferred full-paid stock, and entitled to dividends. The said preferred stock, except said scrip stock, shall be entitled to a dividend of seven per centum per annum, from the net earnings of each current year, after payment of interest on all the mortgage bonds, if the company earn so much during the current year, and before the payment of dividends to any other class of stockholders; but the company may re-
165 serve a reasonable working capital or surplus before the dividend shall be declared or paid on said preferred stock, which surplus shall not exceed at any time the aggregate sum of $250,000 over and above the floating or unfunded debt, and the accrued interest on the mortgage-bonds. If the net earnings of the company are not as much as seven per cent. in any one year, then the said preferred stock shall receive, for that year, a dividend of whatever the said net earnings are, after the payment of interest on the mortgage-bonds, and the reasonable reserve for a working capital, as above described. Said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of any preceding year. And, whenever the company earns sufficient, over and above the payment of interest on the bonds and the reserve above named to pay a greater sum than seven per cent. on outstanding preferred stock, and seven per cent. on the common stock, then the said preferred stock shall share pro rata with the common stock in such earnings." The sixth article provides as follows: "The corporation shall have power to issue bonds in sums of $500 and $1000 to an amount not exceeding two millions two hundred thousand dollars. * * * All of said bonds shall bear an interest not exceeding seven per centum per annum, the principal and interest payable in the city of New York—the interest semi-annually, the principal within thirty years from date. They shall also contain a provision that if the company make default in the payment of interest, or in the application of the sinking fund, as hereinafter provided, for six months, the principal shall thereupon become due without demand or notice. The said corporation shall have power to secure the payment of all the bonds above authorized to be issued, by a mortgage or trust deed upon this franchise, and all the real and personal property of the company now owned or hereafter to be acquired by them, and to embrace the entire corporate property and all its franchises and privileges. The mortgage shall also contain a provision for a sinking fund for the
166 payment of said mortgage-bonds, by which the new company shall obligate themselves to pay to the trustees of said mortgage-bonds all such sums of money, less the expenses of sales, as shall be derived from the sale of any lands which may have been, or shall hereafter be, donated or granted by either the United States or the State of Wisconsin, to aid in building this road, or that shall in any manner be acquired by this company. And said lands shall be fairly and equitably valued and classified by the company, or by such persons as they together shall appoint; and, upon sale of said lands, said mortgage-bonds may be received at par and accrued interest, in payment therefor, and the bonds thus received in payment shall be immediately cancelled. The company shall keep a proper registry or account of all the bonds thus paid by them, and the number or amount of bonds thus cancelled shall be reported by said company to the stockholders at each annual meeting, and said bonds shall be presented and shown at said meeting.

And said trust-deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company as a sinking fund for the payment of said bonds. The bonds secured by said mortgage shall be convertible, at the option of the holder, into the preferred stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock. The said mortgage-deed and bonds shall be signed by the president or vice-president and secretary, and the seal of the company shall be affixed thereto. * * * The said mortgage or trust deed may also contain covenants and agreements authorizing the bondholders to vote in all stockholders' meetings, as follows, each one hundred dollars of the principal of the outstanding bonds shall be entitled to one vote; and giving the bondholders the same pro rata voice in the management of the company with, and as if they were, stockholders to the amount of their bonds." The seventh article provides as follows: "The preferred stockholders shall elect the directors until a dividend shall have been earned, declared, and paid on the common stock,
167 and until then the common stock shall have no vote or voice in the election of directors." The tenth article provides as follows: "Upon the dissolution of this corporation after the payment of its debts the remaining assets shall be divided among the different classes of stockholders according to their preferences, that is to say, the preferred stock, except the scrip stock, shall be first paid in full, and the balance divided among the common stockholders pro rata."

Up to the time the said three bonds left the possession of the plaintiff, he owned and had in his possession three certificates issued by said company to him, each for ten shares of the scrip preferred stock before mentioned, which certificates were numbered, severally, 7667, 7668, and 7669, and were all of them issued September 17th, 1864. Certificate No. 7668 read as follows, on its face: "Certificate for scrip preferred stock, issued Sept'r 17th, 1864. No. 7668, ten shares. This is to certify, that Charles B. Hotchkiss, of New Haven, Conn., is entitled to ten shares of the capital stock of the Milwaukee and St. Paul Railway Company, designated as 'scrip preferred stock' in the articles of association of the company. This stock is not entitled to any dividend. It has one dollar per share paid thereon, and is not liable or subject to any assessment. Upon the surrender of this certificate, and mortgage bond No. 1947 of the company, and all unmatured coupons thereon at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of the company, the said Hotchkiss is entitled to receive ten shares of said full-paid preferred stock. This stock is transferable only on the books of the company, at their office in the city of New York, in person, or by attorney, on the surrender of this certificate. This certificate and the stock represented hereby is issued and received subject to all the terms, conditions, and limitations of this company, and is not valid until countersigned by the transfer agent of the company, and by the registrar of transfers. In witness whereof, the company have caused this certificate to be signed by the president." The certificate was signed, on its face, by the
168 president and the transfer agent, and countersigned by the registrar of transfers, and had printed on its back a blank power of attorney, in this form, the blanks not being filled: "Know all men by these presents that for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto shares of the scrip stock of the Milwaukee and St. Paul Railway Company, standing in name on the books of the

said company, and hereby constitute and appoint true and lawful attorney, irrevocably, for and in name and stead, but to use, to sell, assign, transfer, and set over, all or any part of the said scrip stock, and for that purpose, to make and execute all necessary acts of assignment and transfer, hereby ratifying and confirming all that said attorney shall lawfully do by virtue hereof. In witness whereof, have hereunto set hand this day of , one thousand eight hundred and sixty . Sealed and delivered in presence of ." Certificate No. 7667 was, in all respects, like certificate No. 7668, except that it contained the figures "7667," instead of "7668," and "2070," instead of "1947." Certificate No. 7669 was, in all respects, like certificate No. 7668, except that it contained the figures "7669," instead of "7668," and "2425," instead of "1947." The three bonds, and the three certificates, when they left the possession of the plaintiff were not, any one of them, attached to any other one or more of the rest of them, in any other manner than by pins.

The company, on the 2d of November, 1863, issued to Russell Sage bond No. 1947, and at the same time, issued to him certificate No. 1947, for ten shares of scrip preferred stock, which certificate was like, in form, to certificate No. 7668, except that it contained the words, "Nov'r 2d, 1863," instead of "Sept'r 17th, 1864," and the figures "1947," instead of "7668." Sage, by a written transfer on the books of the company, dated December 23d, 1863, transferred to F. P. James & Co., "subject to all the terms, conditions and limitations of the articles of association of the company," ten
169 shares of scrip preferred stock, (but not bond No. 1947,) and surrendered to the company the said certificate No. 1947, and it issued to F. P. James & Co. certificate No. 7086, which certificate was like, in form, to certificate No. 7668, except that it contained the words, "Dec'r 23d, 1863," instead of "Sept. 17th, 1864," and the figures "7086," instead of "7668." The company, on the 2d of January, 1864, issued to F. P. James & Co. bond No. 2070, and, at the same time, issued to them certificate No. 2070, for ten shares of scrip preferred stock, which certificate was like, in form, to certificate No. 7668, except that it contained the words, "Jan. 2d, 1864," instead of "Sept'r 17th, 1864," and the figures "2070," instead of "7668," as the number of the certificate, and the figures "2070," instead of "1947," as the number of the bond. F. P. James & Co., by a written transfer on the books of the company, dated September 17th, 1864, transferred to the plaintiff, "subject to all the terms, conditions, and limitations of the articles of association of the company," twenty shares of scrip preferred stock, and, also, bonds Nos. 1947 and 2070, and surrendered to the company the said certificate Nos. 2070 and 7086, and it issued to the plaintiff the said certificates Nos. 7667 and 7668. The company, on the 7th of July, 1863, issued to Alfred Noxon bond No. 2425, and, at the same time, issued to him certificate No. 2425, for ten shares of scrip preferred stock, which certificate was like, in form, to certificate No. 7668, except that it contained the words, "July 7th 1863," instead of "Sept'r 17th, 1864," and the figures "2425," instead of "7668," as the number of the certificate, and the figures "2425," instead of "1947," as the number of the bond. Noxon, by a written transfer on the books of the company, dated September 17th, 1864, transferred to the plaintiff, "subject to all the terms, conditions, and limitations of the articles of association of the company," ten shares of scrip preferred stock, and also, bond No. 2425, and surrendered to the company the said certificate No. 2425, and it issued to the plaintiff the said certificate No. 7669. The plaintiff never transferred, on
170 the books of the company, any of the shares of scrip-stock, repre-

sented by certificates Nos. 7667, 7668, and 7669, and those certificates are now outstanding, and have not been surrendered to the company. The plaintiff never signed any of the transfers on the backs of said certificates. The three bonds and the three certificates issued to the plaintiff were stolen from his possession, by robbery, on the 30th of November, 1868.

On the 20th of February, 1869, the National Shoe and Leather Bank, one of the defendants, received from a firm called Waterhouse, Midgley & Co., the said bond No. 1947, and loaned to that firm, on its note, with the said bond as collateral security, the sum of $800, the bonds being then quoted in the market as worth 92 per cent. Such note was renewed several times, and the bank now holds, in renewal, a note of said firm, dated October 5th, 1869, at two months, for $800, with the said bond No. 1947 as collateral security, which bond now has on it three less coupons than it had when it left the possession of the plaintiff, the coupons due January 1st, 1869, July 1st 1869, and January 1st, 1870, being now gone, and there being now on it 45 coupons, beginning with the one due July 1st, 1870, which is No. 16. But coupon No. 15, due January 1st, 1870, is in the possession of the bank, cut off from the bond. When the bank received the bond, it had on it only 47 coupons, beginning with the one due July 1st, 1869, No. 14, which one it afterwards allowed the said firm to have.

On the 22d of January, 1869, the Tradesmen's National Bank, one of the defendants, received from one B. Starr Midgley one of the said two bonds, Nos. 2070 and 2425, and loaned to him on his note, with the said bond as collateral security, the sum of $800. On the 29th January, 1869, the last-named bank received from Midgley the other one of the said two bonds, Nos. 2070 and 2425, and loaned to him $800 more, giving up to him his note for $800, and taking from him his note for $1,600, and thereafter holding the two bonds as collateral security for the last-named note. Such note was renewed several times, and the bank
171 loaned to Midgley $150 more on the bonds, and now holds a note of his, dated February 4th, 1870, on demand, for $1,791.75, with interest, with the said two bonds, Nos. 2070 and 2425, as collateral security, each of which two bonds has now on it two less coupons than it had when it left the possession of the plaintiff, the coupons due January 1st, 1869, and July 1st, 1869, being now gone, and there being now on each of said bonds 46 coupons, beginning with the one due January 1st, 1870, which is No. 15. But coupon No. 14, due July 1st, 1869, from each of the two bonds, is in the possession of the bank, such coupons having been cut off by it, and presented for payment to the company, which was refused. When the bank received the two bonds, each had on it only 47 coupons, beginning with No. 14.

When the bonds were received by the banks respectively, no certificates of scrip preferred stock, or other papers, accompanied them.

The bill in this case, which was filed in April, 1870, claims, that the bond and the certificate of scrip stock constituted but one instrument; that the several parts thereof are not capable of separation and division, in such way that the title to one part thereof can be transferred to one person, and the title to some other part thereof to another person; that the owner or holder of the certificate cannot get the benefit thereof without possession of the remaining part of the obligation; that the holder of the remaining part of the obligation cannot get, and is not entitled to, a performance of the same, as against the company, without possession of the certificate; and that, on the face of the obligation, reference is expressly made, in the several parts thereof, to other parts

of the same obligation, so that the holder of one portion thereof is chargeable with notice of the rights of the holder of the other portion thereof. The bill prays for a decree, declaring that the plaintiff is, as against the banks, the true and lawful owner of the said contracts and obligations, and of every part thereof, and directing that the banks respectively deliver up to him such parts of the said obli-
172 gations as they have, and respectively account to him for all moneys which they have collected thereon, and that the company be enjoined from making any payment, on account of said obligations, to any other person than the plaintiff, and that it issue to the plaintiff new certificates in the place of those so stolen from him, and admit him to all the rights contracted for by it in the said obligations, notwithstanding any claim on the part of the banks.

The bill was taken pro confesso as against the company, it having voluntarily appeared in the suit.

It is contended, for the plaintiff, that it is apparent by the bonds that it was not intended that possession alone of them should be proof of ownership; that they are not, by their terms, performable in favor of the holders of them; that they are not transferable by delivery; that there is, in respect to each bond, a single contract, evidenced by the bond and by the scrip-certificate, the two being a unit; that there is not an agreement to pay money to one person, and an agreement to permit another person to take preferred stock by conversion; that no person can hold any part of the contract, as against the company, who is not, at the same time, a transferee of the scrip-stock as well as a holder of the bond; that, as the scrip-stock and its certificate could not be transferred merely by delivery, the bond could not be transferred separately by delivery; and that the banks, by what appears on the bonds, and by the articles of association, to which the bonds refer, must be held to have had notice that no person could own the bond who did not produce a certificate for scrip preferred stock, as the badge of his ownership, not only of stock, but of the bond.

For the banks, it is contended, that the bond and the certificate of scrip-stock do not constitute only a single instrument; that, by the articles of association, the bond is made one contract, and the certificate is made another contract; that the bond is transferable by delivery, while the stock is transferable only on the books of the company; that the plaintiff, if he had retained the bond, and were to keep it till it
173 matured, could collect all the coupons and also the principal, without producing or surrendering any certificate of stock; that the ownership of the stock, and the possession of the certificate thereof, is only necessary to the exercise of the privilege of conversion; and that the banks are entitled to be recognized as the parties to whom the principal and interest of the bonds are payable, although they claim no privilege of converting the bonds into perferred stock.

The statement, on the face of the bond, that it is executed and delivered in conformity with the articles of association of the company, is notice to the party taking the bond, of whatever those articles contain, in respect to the bond. By the sixth article, the bond is to be convertible, at the option of its holder, into preferred stock, at any time within ten days after any dividend shall have been declared and become payable on the preferred stock. The endorsement on the bond speaks of the bond as a convertible bond. The face of the bond makes the bond convertible only by the declaration that the company agrees to make the scrip preferred stock attached to the bond full-paid stock at any time within ten days after any dividend shall have been declared

and become payable on the preferred stock, on the surrender to the company of the bond and the undue coupons. In the articles of association, the third article provides, that the scrip preferred stock shall be issued in certificates of five and ten shares each, (each share being $100, if full paid,) and shall accompany each mortgage-bond, (the bonds being $500 and $1,000 each,) and that the holder of the bond shall have the right, at any time within ten days after any dividend shall have been declared and become payable on the preferred stock, to make the scrip preferred stock attached to the bond full-paid stock on the surrender to the company of the bond named by its number in his scrip certificate, and that, on surrendering such scrip-certificate and bond, he shall be entitled to receive therefor the same number of shares of full-paid preferred stock. The bond says nothing about converting the bond, other than what is to be implied from what it does say, and
174 from the endorsement, nor does it say anything about surrendering the scrip-stock or the certificate. The bond, in speaking of the scrip preferred stock attached to it, refers, necessarily, to the certificate of scrip preferred stock mentioned in the articles of association. That certificate provides that, on the surrender of itself, and of the bond designated by number in it, and of the undue coupons on such bond, the person to whom the certificate is issued shall be entitled to the like number of shares of full-paid preferred stock, and that the scrip stock is transferable only on the books of the company, "in person or by attorney," on the surrender of the scrip-certificate. The scrip-certificate spoken of in the bond as attached to the bond, must be regarded as present to the view and knowledge of any party taking the bond.

Construing the bond and the certificate and the articles of association together, it is apparent that the company intended to issue its bonds, and secure them by mortgage, and also to allow such bonds to be convertible into full-paid preferred stock, at the rate of one share of stock for each $100 of the principal of the bonds. Why not, then, have adopted the simple plan of declaring that the bond should be convertible into such stock, at the time designated, on the surrender of the bond? Manifestly because it was desired that the holder of the bond, in addition to being such, and thus being a secured creditor, and in addition to being allowed to have the option of converting his bond into full-paid preferred stock, should also, before exercising such option, be allowed certain rights of a stockholder. But the bond being made payable to bearer, with coupons also payable to bearer, and thus transferable and negotiable by delivery, it would be impossible for the company to know what persons were to exercise these rights of a stockholder, unless it kept a record of such persons. It undoubtedly found that it would be impracticable to adopt the suggestion made in the sixth article of the articles of association, that the bondholders might be authorized to vote in all stockholders' meetings, each $100 of the principal of out-
175 standing bonds to have one vote, and to have the same pro rata voice in the management of the company as if they were stockholders to the amount of their bonds. It found that all who were to exercise any of the rights of stockholders must be stockholders. It, therefore, devised the scheme of scrip preferred stock, and the person in whose name such stock should stand on its books was to be entitled to all the rights and privileges of other stockholders, except that he should not be entitled to any dividend, or other profit or increase, from the income or assets of the company. One of those rights and privileges, and probably a valuable one, was, that holders of scrip preferred

stock, equally with the holders of full-paid preferred stock, were entitled to vote in the election of directors of the company; and this, too, to the exclusion of the holders of the common stock, until a dividend should have been earned, declared, and paid on the common stock. For these purposes, the company adopted the plan of the scrip preferred stock, transferable only on its books.

The registered owner of the scrip preferred stock could have these rights of a stockholder. If, in addition, he should continue to hold the bond designated in the certificate, he could, by surrendering such bond, convert it, and at the same time convert his scrip preferred stock into full paid preferred stock. But the company did not require that the bonds should be registered or that they should be transferable solely on the books of the company, or that the debt evidenced by the bond and the coupons should be transferable otherwise than by the delivery of the same. There is nothing to that effect in the articles of association, or in the bond, or in the certificate of scrip preferred stock. The third article says that the certificate is to accompany the bond, implying that the bond, as an obligation for the payment of money, is a complete instrument without the certificate; and that the holder of the bond shall have the right to make full-paid stock out of the scrip-stock attached to or accompanying the bond on surrendering the bond and the scrip-certificate, implying that to hold the bond as an obligation for the payment of money is one
176 thing, and to obtain full-paid stock by surrendering the bond and the scrip-certificate is another thing. Most unquestionably the holder of the bond could at all times collect his coupons without producing his certificate of scrip stock. So at maturity he could demand payment of the principal without producing such certificate. The certificate is required to be produced only when it is to be surrendered on a transfer of stock, or when it is to be surrendered on a conversion. There is nothing which requires the bonds to be transferred on the books of the company. It is true that the two transfers to the plaintiff transferred to him the three bonds in question, as well as the thirty shares of scrip preferred stock. But bond No. 1947, issued to Sage, was not transferred by Sage to James & Co. on the books of the company, although James & Co. transferred it to the plaintiff on such books. Whatever it may have been intended should have been inserted in the blanks under the headings in respect to transfers on the back of the bond, nothing was inserted therein in any of the bonds in question, nor does it appear that anything was ever inserted therein in any bond that was issued, or that any bond was ever required to be produced to the company when scrip preferred stock was transferred, or that any regulation was ever prescribed respecting the transferring of bonds otherwise than by delivery.

It is, undoubtedly, true that the registered owner of the scrip-stock cannot exercise an option of converting his scrip-stock into full-paid stock, without producing and surrendering his bond, although he might vote for directors without producing his bond. But there is nothing to prevent his parting with his position as a mere mortgage-creditor by passing the title to the debt by delivery, by manual tradition of the bond, without transferring the scrip stock. The new holder of the debt will not acquire the right to vote as a stockholder, or any other right of a stockholder, or the right to convert the scrip stock into full-paid stock. But he will be a creditor, entitled to payment of the coupons and of the principal, and to the security of the mortgage. In the bond the acknowledgment of indebtedness to the persons named, "or
177 bearer," in the sum named, with the promise to pay that sum

and the interest named on the presentation and surrender of the coupons annexed, is a distinct and separate obligation from anything else in the bond. The agreement in regard to making full-paid stock out of the scrip stock attached to or accompanying or issued with the bond, is an additional and supplementary agreement. The articles of association, while they speak of paying interest on the bonds, do not require that the principal of the bonds shall be made payable to bearer, and make no reference to coupons or interest-warrants. The bonds might, therefore, have been made registered bonds, and the interest might have been made payable otherwise than by coupons, and otherwise than to the bearers of the coupons. The adoption of the plan of making the principal of the bonds payable to bearer, and of paying the interest by means of coupons payable to bearer, was a deliberate act of choice on the part of the company. It might have made the principal and interest payable only to the person in whose name the scrip preferred stock stood, instead of making them payable to bearer.

From these considerations it follows that, if the scrip-certificates, and the articles of association had been before the officers of the banks who took these bonds, when they took them, no information would thereby have been conveyed to them, that the bonds were not transferable by delivery. There was nothing to prevent the plaintiff himself from parting with the bonds, and thus parting with the right to convert the scrip stock into full-paid stock, because he would be unable thereafter to surrender the bonds, while still retaining all other rights incident to the ownership of the scrip stock. It appears that such right of conversion had, in some cases, been exercised, but, manifestly, the desire to exercise it would be dependent upon the fact whether the full-paid preferred stock was worth more in the market than the bonds with the convertible privilege. It might very well be that the plaintiff himself, or any other person who had been the holder of the bonds offered to
178 the banks, had elected to part with the bonds for what they were worth, unaccompanied by the scrip stock. There was nothing in the bonds, or the scrip-certificates, or the articles of association, regarded as before the officers of the banks, to indicate to them the contrary of this, or to make it possible to impute to them that mala fides which it is necessary should exist in the case of coupon-bonds, payable to bearer, like these, taken before maturity, for a valuable consideration, in the usual course of business, without notice of any defect of title, in order to impeach the title to them in the hands of the person so taking them. The plaintiff has suffered the bonds to pass into the hands of bona-fide holders of them, and fails to impeach their title. In his bill he alleges bad faith; but none is shown. The principles applicable to the facts of this case are too well settled by authoritative decisions, State and Federal, to make it necessary to refer to such decisions, or to the considerations of public policy on which they are founded.

The relief prayed for as to the banks cannot be granted, and the bill must be dismissed, as to them, with costs. As to the railway company, in so far as the bill asks for a decree that the company issue to the plaintiff new certificates of scrip preferred stock, in place of those stolen from him, and admit him to all the rights and privileges which such certificates contract for, the plaintiff is entitled to such relief. He can make such certificates fully available for the purposes of conversion, by purchasing the bonds designated in them.

Francis N. Bangs, for the plaintiff.
Henry N. Beach, for the Shoe and Leather Bank.
Smith & Woodward, for the Tradesmen's Bank.

179 Circuit court of the United States for the southern district of New York.

CHARLES B. HOTCHKISS, COMPLAINANT,
vs.
THE NATIONAL SHOE AND LEATHER BANK OF the City of New York, The Tradesmen's National Bank, and the Milwaukie and St. Paul Railway Company, defendants. } In equity. March 1st, 1873.

This cause came on to be heard at the October term of this court, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, namely:

That the complainant's bill do stand dismissed out of this court as to the defendant The National Shoe and Leather Bank of the city of New York, with one hundred and forty-three $\frac{97}{100}$ dollars costs, taxed by the clerk of this court, which are hereby adjudged to be paid by the complainant, Charles B. Hotchkiss, to said defendant the National Shoe and Leather Bank; and also as to the defendant the Tradesmen's
180 National Bank, with one hundred and forty-eight $\frac{32}{100}$ dollars costs, taxed by the clerk of this court, which are hereby adjudged to be paid by the complainant, Charles B. Hotchkiss, to said defendant The Tradesmen's National Bank, and as to the relief sought by the complainant against the defendant The Milwaukie and St. Paul Railway Company, it is ordered, adjudged, and decreed that the said defendant, The Milwaukie and St. Paul Railway Company, issue to the said complainant new certificates of scrip preferred stock in place of the several certificates which were stolen from him, as described in said bill of complaint herein; and that the said defendant, the Milwaukie and St. Paul Railway Company, admit said complainant to all the rights and privileges which are contracted for by the said certificates.

(Signed) SAMUEL BLATCHFORD.

(Endorsed:) U. S. circuit court. Charles B. Hotchkiss vs. The National Shoe and Leather Bank of the city of New York, The
181 Tradesmen's National Bank, and the Milwaukie & St. Paul Railway Company. Decree. Beach & Beman, solicitors for def't The National Shoe & Leather B'k. Smith & Woodward, solicitors for def't The Tradesmen's National B'k.

Service admitted, February 3rd, 1873.

(Signed) C. W. BANGS,
Pl'ff's Att'y.

Filed March 3, 1873.

182 To C. W. BANGS, Esq.,
Complainant's Solicitor:

SIR: The foregoing is a copy of the proposed decree in this action, which will be submitted for settlement to his honor Judge Blatchford, at his chambers, No. 41 Chambers st., New York City, on the eighth day of February, 1873, at $10\frac{3}{4}$ a. m.

Dated February 1, 1873.

Yours, &c.,

BEACH & BEAMAN,
Sol'rs for Def'ts The Nat. Shoe & L. Bank.
SMITH & WOODWARD,
Sol'rs for Def't The Tradesmen's Nat. B'k.

183 U. S. circuit court, southern district of New York.

CHARLES B. HOTCHKISS, APPELLANT,
ag't
THE NATIONAL SHOE AND LEATHER BANK OF the City of New York and The Tradesmen's National Bank, appellees.

To the honorable the Supreme Court of the United States:

The appeal of Charles B. Hotchkiss, the above-named appellant, respectfully showeth:

That on the twenty-third (23d) day of April, A. D. eighteen hundred and seventy, (1870,) the above-named Charles B. Hotchkiss filed his bill of complaint in the circuit court of the United States for the southern district of New York, against the above-named appellees, The National Shoe and Leather Bank of the city of New York, The Tradesmen's National Bank, and the Milwaukee and St. Paul Railway Company, in a suit in equity to recover certain property fully described in said bill of complaint on file in said circuit court.

184 That the appellees, the National Shoe and Leather Bank of the city of New York and the Tradesmen's National Bank, duly appeared in said action and filed their answer to said bill of complaint; and the defendants the Milwaukie and St. Paul Railway Company duly appeared but filed no answer to said bill, and the bill was taken pro confesso against said company; and thereupon such proceedings were had in the said court, that on the fourth (4th) day of March, A. D. eighteen hundred and seventy-three, (1873,) a final judgment and decree was duly entered in said circuit court, wherein it was in substance adjudged that the complainant's bill do stand dismissed out of this court as to the defendant The National Shoe and Leather Bank of the city of New York, with one hundred and forty-three and $\frac{97}{100}$ dollars costs, and also as to the defendant The Tradesmen's National Bank, with one hundred and forty-eight $\frac{32}{100}$ dollars costs; which said judgment and decree dismissing this appellant's said bill as against said National Shoe and Leather Bank of the city of New York and the Tradesmen's National Bank with costs, is, as this appellant is advised, erroneous and ought to be reversed.

185 Wherefore this appellant appeals from so much of the said decree of said circuit court against this appellant as dismisses his said bill as to the said defendants, The National Shoe and Leather Bank of the City of New York and The Tradesmen's National Bank, with costs, to the Supreme Court of the United States, and respectfully prays that said decree of said circuit court and the bill of complaint, answers, replications, depositions, evidence, and proceedings in the said cause may be sent to the said Supreme Court of the United States without delay, and that the said Supreme Court of the United States will proceed to hear the cause anew, and that so much of the said decree of the said circuit court of the United States for the southern district of New York as dismisses this appellant's said bill as against the said National Shoe and Leather Bank of the City of New York and The Tradesmen's National Bank, may be reversed, or such other decree made as to the said Supreme Court shall seem just.

Dated New York, March 24th, 1873.

CHARLES B. HOTCHKISS.
By C. W. BANGS, *his Solicitor.*

186 (Endorsed:) U. S. circuit court. Charles B. Hotchkiss, appellant, ag't The National Shoe and Leather Bank of the city of New York and The Tradesmen's National Bank, appellees. Petition of appeal. C. W. Bangs, sol'r for app'l't, 137 B'way, N. Y.

The within appeal allowed, & bond approved & citation signed this day of March, 1873.

Filed March 25, 1873.

187 United States circuit court, southern district of New York.

CHARLES B. HOTCHKISS, APPELLANT,
vs.
THE NATIONAL SHOE AND LEATHER BANK OF the city of New York and the Tradesmen's National Bank, appellees.

Know all men by these presents that we, Charles B. Hotchkiss, of Bridgeport, Fairfield County, in the State of Connecticut, and Levi S. Stockwell, of the city, county, and State of New York, are held and firmly bound unto the National Shoe and Leather Bank of the city of New York and the Tradesmen's National Bank, in the sum of one thousand dollars, to be paid to the said National Shoe and Leather and the Tradesmen's National Bank or their assigns, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eighteenth day of March, one thousand eight hundred and seventy-three.

188 Whereas the above-named Charles B. Hotchkiss, plaintiff in the above-entitled cause, has prosecuted an appeal to the Supreme Court of the United States, out of this court, to reverse a decree rendered in the above-entitled cause, and entered with the clerk of this court on the fourth day of March, 1873, by which decree it was adjudged that complainant's bill in this cause be dismissed out of this court as against the said defendants, The National Shoe and Leather Bank of the city of New York and the Tradesmen's National Bank, with $143.97 costs to the defendant The National Shoe and Leather Bank of the city of New York, and $148.32 costs to the defendant The Tradesmen's National Bank:

Now, therefore, the condition of the above obligation is such, that if the above-named appellant, Charles B. Hotchkiss, shall prosecute his said appeal to effect, and shall pay all damages and costs which may be awarded against him, if the said decree shall be affirmed, then this obligation to be void; otherwise to remain in full force and virtue.

CHAS. B. HOTCHKISS. [L. S.]
LEVI S. STOCKWELL. [L. S.]

Sealed and delivered in the presence of—
T. C. BENNETT.
H. M. KNAPP.

189 UNITED STATES OF AMERICA,
District of *ss:*

Charles B. Hotchkiss, being duly sworn, deposes and says, that he is a freeholder in the city of Bridgeport, Fairfield County, and State of Connecticut, residing in said city of Bridgeport, and that he is worth the sum of two thousand dollars over and above all his liabilities and property exempt by law from execution.

CHA'S B. HOTCHKISS.

Sworn to before me this eighteenth day of March, A. D. 1873.
[L. S.] J. B. PRINDLE,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Levi S. Stockwell, being duly sworn, deposes and says, that he is a freeholder in the city, county, and State of New York, and residing in said city of New York, and that he is worth the sum of two thousand dollars over and above all his liabilities and property exempt by law from execution.

LEVI S. STOCKWELL.

Sworn to before me this 21st day of March, A. D. 1873.
T. FRANCIS GIBBONS,
Notary Public N. Y. Co.

190 UNITED STATES OF AMERICA,
District of ss:

On this eighteenth day of March, A. D. 1873, before me personally came Charles B. Hotchkiss, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.
[L. S.] J. B. PRINDLE,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 21st day of March, A. D. 1873, before me personally came Levi S. Stockwell, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.
[L. S.] T. FRANCIS GIBBONS,
Notary Public N. Y. Co.

I hereby approve the foregoing bond as to form and sufficiency and manner of execution, and as to sufficiency of the sureties.
March 25th, 1873.

SAM'L BLATCHFORD.

191 (Endorsed:) United States circuit court southern district of New York. Charles B. Hotchkiss, appellant, ag't The National Shoe and Leather Bank & ano'r, appellees. Bond on appeal to the Supreme court of the United States. C. W. Bangs, sol'r for appellant, 137 Broadway, N. Y. Filed March 25, 1873.

192, 193 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Percy McElrath, being duly sworn, deposes and says, that on the 31st day of March, 1873, he served the within citation upon appeal upon Beach and Beman, the attorneys for the defendant The National Shoe and Leather Bank of the City of New York, by delivering to and leaving with said Beman a copy of said citation at the office of said Beach and Beman, number 30 Broad street, in the city of New York.

PERCY McELRATH.

Sworn to before me this 1st day of April, 1873.
HENRY DONNE,
Notary Public N. Y. Co.

195 By the honorable Samuel Blatchford, a judge of the circuit court of the United States for the southern district of New York.

To The National Shoe and Leather Bank of the City of New York and The Tradesmen's National Bank:

Whereas Charles B. Hotchkiss has appealed to the Supreme Court of the United States from so much of the decree rendered in the circuit court of the United States for the southern district of New York, and entered with the clerk of said court on the fourth (4th) day of March, eighteen hundred and seventy-three, (1873,) made in favor of you the said The National Shoe and Leather Bank and The Tradesmen's National Bank, in a suit brought by the said Charles B. Hotchkiss against the said The National Shoe and Leather Bank and The Tradesmen's National Bank, and the Milwaukee and St. Paul Railway Company, as dismisses the bill of said appellant against said National Shoe and Leather Bank of the City of New York and the Tradesmen's National Bank, with costs, and has filed the security required by law, you are hereby cited to appear before the said Supreme Court of
196 the United States, at the city of Washington, on the 2d Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at New York, this 25th day of March, A. D. eighteen hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court. In equity. Charles B. Hotchkiss, appellant, ag't The National Shoe and Leather Bank of the City of New York and The Tradesmen's National Bank, appellees. Citation on appeal. C. W. Banks, sol'r for app'l't, 137 B'way, N. Y.

Due service of a copy within is hereby admitted.

N. Y., March 28, 1873.

SMITH & WOODWARD,
Solicitors for Tradesmen's National Bank.

197 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 196, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles B. Hotc'kiss against The National Shoe & Leather Bank et al., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 7th day of October, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 219. Charles B. Hotchkiss, appellant, vs. The National Shoe & Leather Bank of New York City and The Tradesmen' National Bank. S. New York, C. C. U. S. Filed 9th October, 1873.

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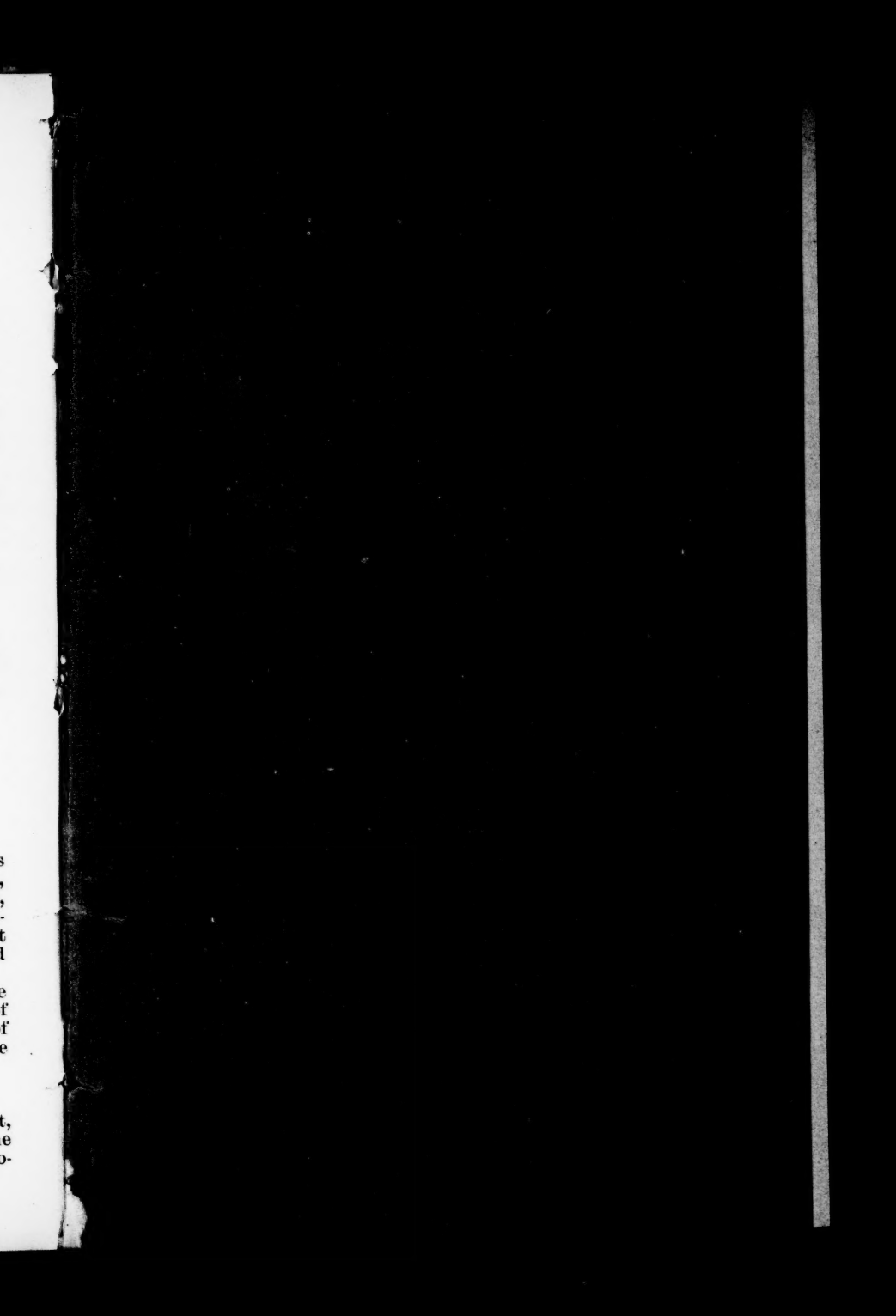

IN THE

Supreme Court of the United States,

OCTOBER TERM—1874.

No. 219.

CHARLES B. HOTCHKISS,

Appellant,

vs.

THE NATIONAL SHOE AND LEATHER BANK AND THE TRADESMEN'S NATIONAL BANK,

Appellees.

Statement and Brief for Plaintiff on his Appeal from a Decree of the Circuit Court of the United States for the Southern District of New York, dismissing his Bill.

F. N. BANGS,

Of Counsel for Appellant.

NEW YORK:
EVENING POST STEAM PRESSES,
41 NASSAU STREET, COR. LIBERTY.

1874.

EVENING POST STEAM PRESSES, 41 Nassau Street, cor. Liberty, N. Y.

In the Supreme Court

OF THE UNITED STATES.

IN EQUITY.

CHARLES B. HOTCHKISS,
Appellant.

vs.

THE NATIONAL SHOE AND LEATHER Bank and the Tradesmen's National Bank,
Appellees.

No. 219.

October Term, 1874.

Brief for Plaintiff on his Appeal from a decree of the Circuit Court of the United States for the Southern District of New York, dismissing his bill.

The appellant filed a bill in the court below to establish his title to and to recover, some detached portions of three certain entire writings obligatory issued by the The Milwaukee and St. Paul Railway Company;

of which writings he claimed to be the owner, and of which he had lost the possession by robbery, and of two of which parts had come into the possession of the defendant the Tradesmen's Bank, and of one of which a part had come into the possession of the defendant the Shoe and Leather Bank.

THE BILL alleged that in May, 1863, the Milwaukee & St. Paul Railway Company made certain contracts or obligations, of which copies are annexed, as exhibits, at folios 8 to 20.

These exhibits severally constitute contracts of a peculiar nature. Each of them consists of two pieces of paper, each piece referring to the other, and both pieces being usually kept folded up together, or attached by a pin or by mucilage.

One of the parts of the contract (*fol.* 8) begins with an acknowledgment of indebtedness by the railway company to certain persons named, or bearer, in the principal sum of $1,000, payable January 1, 1893, and this part has attached to it coupons for the semi-annual payment of interest. The coupons of course are capable of detachment and transfer by themselves. The document then contains a further clause, in these words: "*The said company also agree to make the scrip preferred stock attached to this bond full paid stock at any time within ten days after a dividend shall have been declared and become payable on said preferred stock, upon surrender to the company, in the city of New York, of this bond and the unmatured interest warrants*" (*fol.* 9). The document further declares (*fol.* 9) that the bond was one of a series of bonds amounting to $2,200,000, "all which bonds are executed and delivered in conformity with the laws of Wisconsin, the articles of association of the company, the vote of the stockholders, and resolution of the board of directors."

The other part of the entire contract, which other part is attached to this obligation and is referred to in it, is in the form of a certificate of stock, and is exhibited at folio 11. It identifies a particular individual as entitled to ten shares of the capital stock of the

company, designated as scrip preferred stock in the articles of association. It provides that upon the surrender of the certificate, and of the mortgage bond which it accompanies, and of all unmatured coupons on such bond, at any time within ten days after any dividend shall have been declared and become payable on the full stock of the preferred stock of the company, the person designated in the certificate is entitled to receive ten shares of said full paid preferred stock; and it adds, "*this stock is transferable only on the books of the company, at their office in the city of New York, in person or by attorney, on the surrender of this certificate.*"

The bill further alleged (*fol.* 2) that by the charter of the company the holder of these obligations was entitled to vote at elections for directors, and that the plaintiff was registered on the books of the company as the holder of them, and had never transferred the scrip, nor the bonds, nor any of them upon the books of the company, or otherwise, and had never surrendered nor canceled the bonds, and it is also alleged (*fol.* 3) that each of said contracts constituted but one instrument, and that the several parts thereof were not capable of separation and division in such a way as that the title to one part could be transferred to one person and the title to the other part to another person; that the holder of the certificates could not get the benefit thereof without the bond part, and the holder of the bond part could not get the benefit thereof without the certificates.

The bill further alleged (*fol.* 23) that on Nov. 29, 1868, the plaintiff was in possession of the said contracts when the same were fraudulently and feloniously stolen and carried away from him by some person unknown; that the thief detached and separated the certificates of stock from the other part; that by means and in consequence of this felony and fraud the defendants severally obtained, remotely from the thieves, possession of so much of these contracts as contained or expressed the promise to pay money and interest

and as contained or expressed the agreement to issue stock upon the surrender of the bond, but without the plaintiff's having ever executed or delivered any transfer; and it charges (*fol.* 4) that the respective defendants received the said respective contracts or obligations in bad faith, and with notice from the contents and references thereof of the issuing and attachment as aforesaid of the said certificates and of the contents thereof, and of the fraudulent detaching of the same. It further alleged (*fol.* 5) that by reason of these facts he was prevented from exercising the right of conversion given by the contracts, and the right of surrendering the bonds and obtaining preferred stock in lieu thereof; that while such detached portions of the contracts as had come to the possession of the defendants were not of themselves marketable, so that a recognized measure of damages could be applied in an action at law, yet the detention of them prevented his enjoying either the right of collecting money or the right of conversion.

The plaintiff therefore prayed (*fol.* 6) for a restoration to him of what had come into the possession of the defendants.

The bonds, of which copies are annexed to the bill, are respectively numbered 1947, 2070 and 2425.

THE ANSWERS of the defendants put in issue all the substantial averments of the bill, except that the defendants were, respectively, in possession of the bond portions of the several contracts, and not of the scrip certificates. The Tradesmen's Bank averred (*fol.* 32) that it received the two bonds numbers 2070 and 2425 in good faith, for value, and in the ordinary course of business. The Shoe and Leather Bank set up a defense of the same character in reference to bond No. 1947.

The proofs showed the following facts:

The Milwaukee & St. Paul Railway Company was organized (*fols.* 81 to 104), in May 1863, under articles

of association which provided, among other things (*fol.* 88), for the issue of $2,200,000 scrip preferred stock, which should entitle the person in whose name it should stand on the books to all the rights and privileges of other stockholders, except that it should not entitle the holder to any dividend or other profit. It was to be issued in certificates of five and ten shares each *and was to accompany each mortgage bond of the company.* The holder was to have the right, at any time within ten days after any dividend should have been declared and become payable on the preferred stock, to make the scrip preferred stock attached to his bond full paid preferred stock upon the surrender to the company of the mortgage bond named by its number in his scrip certificate, and upon surrending such scrip certificate and bond, he should be entitled to receive therefor the same number of shares of preferred full paid stock and entitled to dividends. By article 6 (*fol.* 96) the corporation was authorized to issue bonds to the amount of $2,200,000 to be secured by mortgage, and each bond to be convertible (*fol.* 98) at the option of the holder, into the preferred stock at any time within ten days after any dividend should have been declared and become payable on the preferred stock, and the mortgage was authorized (*fol.* 99) to certain covenants and agreements authorizing the bondholders to vote at all stockholders' meetings.

Under these articles, bond No. 1947 was issued originally to Russell Sage (*fol.* 62). There was then annexed to it a certificate No. 1947 for ten shares of scrip preferred stock (*Ex.* 6, *fol.* 138). On December 23, 1863, Mr. Sage transferred these shares to F. P. James & Co. (*Ext.* 7, *fols.* 107, 108), by a transfer on the books of the company. At that time certificate No. 1947 was surrendered and a new certificate, No. 7086 (*Exhibit* 7½, *fol.* 184), was issued to F. P. James & Co. On September 17th, 1864, F. P. James & Co. transferred these same ten shares to the plaintiff, surrendering certificate No. 7086, the plaintiff receiving

in lieu of it certificate No. 7668, which is still outstanding and has never been surrendered (*fols.* 159, *Ext.* 8, *fol.* 62).

Bond No. 2070 was originally issued to F. P. James & Co., in January, 1864. It then had attached a certificate, No. 2070, issued for ten shares to and in the name of F. P. James & Co. These ten shares were transferred on the books of the company by F. P. James & Co. to the plaintiff on September 17, 1864, at which time certificate No. 2070 was surrendered and a new certificate, No. 7667, was issued to and in the name of the plaintiff, which is still outstanding (*fol.* 63 and Ext. 8, *fol.* 110, Ext. 9, *fol.* 111).

Bond No. 2425 was originally issued to Alfred Noxon, with certificate No. 2425 for ten shares issued to and in the name of Mr. Noxon. These ten shares were transferred on the books of the company by Mr. Noxon to the plaintiff (Ext. 11, *fol.* 115). Upon that transfer, certificate No. 2425 was surrendered, and a new certificate, No. 7668 was issued to and in the name of the plaintiff, which is still outstanding (*fol.* 64 ~~62~~).

The company has always kept a stock and bond ledger, containing accounts of the scrip preferred stock. The accounts are kept in the form of debit and credit accounts with the holders of the stock. Each original holder was credited with the number of shares issued to him, and charged with what he transferred, and then each successive transferee was credited with what was transferred to him, by which means the plaintiff, on his ledger account, came to be credited, on September 17, 1864, with fifty shares in all (*Ext.* 12, *fol.* 116).

The company also kept a book, entitled "Certificates canceled and scrip preferred stock," showing the persons to whom the stock was issued, when delivered, number of certificates, with the number of shares expressed in them respectively, the dates of the certificates, by whom surrendered, when surrendered, num-

ber of new certificates, and total shares. The particulars of the plaintiff's certificates all appeared on this book (*Ex.* 13, *fol.* 118).

These books are used as registers of voters at elections (*fol.* 64).

In November, 1868, the original bonds, Nos. 2070, 2425 and 1947, with the scrip certificates then attached, and all the coupons then on them, were stolen, being part of $100,000 worth of stolen property belonging to the plaintiff, from the vault of the Pequonnock Bank, at Bridgeport, Conn. (*fols.* 49 to 55). The plaintiff had not at that time transferred the scrip certificates, nor the shares represented by them, on the books of the company or otherwise. The bonds when folded up had conspicuously endorsed on the back the word "convertible." The scrip certificates and the bonds were attached together by pins, and the pinholes were visible at the time of taking the proofs in this cause (*fols.* 58, 59).

The proofs on the part of the defendants showed the circumstances and consideration upon which they received the bonds. When they received them the scrip certificates were detached (*fols.* 120, 136), and the bank did not receive, nor claim to acquire title to, such certificates.

The plaintiff does not contend that the defendants had ocular proof of his ownership of the securities or of the felonious taking of the property from his possession. The question he raises is, whether the property which was in his possession in November, 1868, was of such a description that a thief could, against his will, confer upon the defendants a title to fragmentary portions of it; and whether the references in the bonds, to the scrip, did not make the defendants chargeable, as matter of law, with knowledge of the contents of the scrip, and consequently with knowledge of his reserved rights and title.

The Circuit Court held that the defendants were chargeable with notice of what was in the articles of

association of the company, and that "the scrip certificate spoken of in the bond as attached to the bond, must be regarded as present to the view and knowledge of any party taking the bond" (*fol.* 174), "but that if the scrip certificates, and the articles of association had been before the officers of the banks who took these bonds, when they took them, no information would thereby have been conveyed to them that the bonds were not transferable by delivery" (*fol.* 177). The court considered the bonds in the same light in which it would have regarded ordinary coupon bonds, and after holding (*fol.* 178) "that the principles applicable to the facts of this case are too well settled by authoritative decisions, State and Federal, to make it necessary to refer to such decisions, or to the considerations of public policy on which they are founded," dismissed the bill as to the banks; but, manifestly upon the theory that the plaintiff had not, by the robbery, lost all his rights, decreed that he was entitled to a new certificate from the railway company, which had been made a party defendant, for conformity, to the suit.

From the decree in favor of the banks the plaintiff appeals.

The appellant does not allege any error in the admission or rejection of evidence, but he does allege as error:

1. That the Circuit Court did not decree that the plaintiff's title to the bonds had not been lost by the robbery which deprived him of their possession, nor by their subsequent transfer to the defendants.

2. That the Circuit Court, while holding that the plaintiff's title to the scrip certificates and the shares evidenced thereby, remained unaffected by the robbery, did not also hold that the defendants acquired possession of what they did receive subject to the right of the

plaintiff, as a shareholder, to the benefit of the agreement expressed on the face of the contract, that the company would convert the scrip into full paid stock upon surrender of the bond, and did not hold that the plaintiff is entitled to the possession of the whole in order that he may get the benefit of the convertible privilege expressed in it, with which he has never parted, and which has never yet been performed in his favor, and which the defendants are conceded not to have acquired.

POINTS FOR APPELLANT.

First.—It is conceded by the appellant that if the instruments in question were, at the time they were issued by the company, or at the time when they were stolen from the plaintiff, no more in form and substance than ordinary coupon bonds or promissory notes payable to bearer, then it is true that no question of law arises which has not been authoritatively settled by adjudications of this court; and therefore he contends,

Second.—That the several instruments in question were not, in form or substance, at the time when they left the hands of the company, nor at the time when they were stolen from him, ordinary coupon bonds, nor promissory notes payable to bearer:

1. An ordinary coupon bond is in the form of a simple acknowledgment of indebtedness, coupled with a promise to pay it at a given date to the bearer, and to pay interest on it meanwhile; the right to interest being separable from the right

to principal, and evidenced by the possession of a coupon which is transferable by delivery.

2. Each of the contracts in question so far resembled an ordinary coupon bond as to consist in part of an acknowledgment of indebtedness payable to bearer, with interest payable meanwhile upon coupons annexed; but the point of dissimilarity consists in the fact that each of them contained an agreement to do something with or in reference to a paper described as attached, the possession of which is made indispensable to a full understanding of the nature of the obligation, and without which the company cannot be called upon to perform its agreement. Reading the contract without the scrip, the court cannot know fully what obligation, in all, the company assumed. When the scrip is seen and referred to, and not before, it is understood what the precise measure of the company's obligation was.

3. The obligations in question are also distinguishable, in form at least, from the one passed upon in 22 *N. Y. R.*, 114, *Hodges* vs. *Shuler*, which is a case relied upon by the appellees. There the whole obligation and what would satisfy it was fully expressed on a single piece of paper.

Third.—These differences, which are matters of fact, being borne in mind, the question is whether they amount to enough to constitute a difference in quality and legal effect between the contracts in question (at the time they were issued by the Co. and at the time they were stolen from the plaintiff) and ordinary coupon bonds or promissory

notes, payable to bearer. The appellant contends there was such a difference

1. Each contract, although it took two pieces of paper to express the whole of it, was a unit. Each coupon might constitute a separate contract in favor of its bearer, but the obligation to pay $1,000 of principal money was not separable and divisible from the obligation to convert the scrip into preferred stock, in such sense that A, as the holder of a money bond, could compel payment of money, and B, as the holder of the agreement and of the annexed scrip, could compel a conversion into stock ; and this is because the obligor never so agreed.

2. Physical attachment or annexation of the two pieces of paper was not necessary in order to make them one contract. They were, to all intents and purposes, attached by the cross references to the other which each contained. They were, constructively and in the eye of the law, always in each other's company ; so that when the portion which promised to pay $1,000 was handed to the defendant's cashier, he must be deemed to have seen the annexed scrip.

6 *Durnford & E.*, 737, *Stedman* vs. *Purchase.*
8 *Do.*, 483, *Burge* vs. *Wheeler.*
2 *Campbell*, 205, *Leeds* vs. *Lancashire.*
14 *East*, 568, *Weeks* vs. *Maillardet.*
4 *Campbell*, 126, *Hartly* vs. *Wilkinson.*
13 *Mass.*, 31, *Cooledge* vs. *Inglee.*
14 *Do.*, 322, *Bank* vs. *Merrick.*
14 *Johnson*, 368, *Platt* vs. *Smith.*
6 *Cowen*, 151, *De Forest* vs. *Frary.*
4 *N. H.*, 171, *Emerson* vs. *Murray.*
10 *Pickering*, 228, *Heywood* vs. *Perrin.*

7 *Wendell*, 346, *Reed* vs. *Drake*.
2 *Fairfield*, 293, *Ulmer* vs. *Reed*.
10 *Shepley*, 329, *Johnson* vs. *Heagan*.
16 *Vermont*, 26, *Fletcher* vs. *Blodgett*.
2 *Barb. Ch.*, 119, *Waring* vs. *Smyth*.
2 *Ellis & B.*, 763, *Warrington* vs. *Early*.
23 *Barbour*, 584, *Chappell* vs. *Spencer*.
5 *Monroe*, 25, *Bank* vs. *Phinney*.
2 *B. Monroe*, 310, *Johnson* vs. *Bank*.
27 *Iowa*, 423, *State* vs. *Stratton*.
20 *Michigan*, 424, *Wait* vs. *Pomeroy*.
5 *Howard*, 382, 397, *U. S.* vs. *Bank of U. S.*
2 *Denio*, 130, *Cornell* vs. *Todd*.
49 *N. Y. R.*, 396, *Benedict* vs. *Cowdin*.

(The cases are summed up in 23 Barbour, and 49 N. Y. R., 396.)

3. Taking the whole instrument together, in the form in which it was when issued by the company, and when stolen from the plaintiff, and keeping in view the fact that the company did not intend to enter into two distinct obligations, performable in favor of two distinct obligees, it is evident that the acknowledgment of indebtedness to the bearer is qualified by the subsequent special agreement, so that such acknowledgment of indebtedness enures to the benefit of the bearer only upon condition that he continues to be the holder of the annexed scrip.

4 *Mass'ts.*, 254, *Jones* vs. *Fales*.
10 *Pickering*, 228, *Heywood* vs. *Perrin*.
10 *Shepley*, 329, *Johnson* vs. *Heagan*.

Otherwise, the company would be placed in the attitude of owing money to one person and another obligation to some other person, or else of being discharged, without performance and

without the consent of the obligee, from one alternative of its contract.

4. These contracts do not appear to have been intended to circulate as evidences of debt merely. They were also evidences of title to property and of a right to vote.

Fourth.—Treating each set of the papers as constituting an entire contract, not severable, against the will of the obligor, into independent fragments, each constituting a distinct contract by itself, then, at the times when and in the shape in which they were issued by the company (which shape they retained when they were stolen from the plaintiff), they were not negotiable against the will of the owner, even if they are styled promissory notes.

1. Assuming negotiability to mean, in a general sense, that quality of a contract which enables its possessor to transfer title by delivery, and to confer a better title than he himself had acquired, yet there are three meanings to the term, capable of being easily distinguished from each other. The word "negotiable" may mean, when applied to a given contract, that it is capable of being put by the act of its holder, in pursuance of the intent of the maker, in such a condition that it may be transferred by delivery; or it may mean that the maker of if has, upon its issue, put it in a condition where, without any written act of the holder, it may be transferred by delivery; or it may mean that the holder, in pursuance of the intent of the maker, has in fact put it in such condition that he may

transfer it by delivery. To illustrate: The instrument which was in question in *Hodges* vs. *Shuler* was payable to order. It was therefore negotiable in the sense that the payees might, by endorsement, put it in condition to be transferred by delivery. An ordinary coupon bond is payable to bearer; it is therefore negotiable in the sense that the maker has, at the time of issuing it, put it in condition to be transferred by delivery. A promissory note payable to order and endorsed by the payee is negotiable in the sense that its holder has, in pursuance of its maker's intent, put it in condition to be transferred by delivery.

53 *N. Y. R.*, 313, *Ledwick* vs. *McKim*.

2. Negotiability, in either sense, is a quality infused into a contract by the agreement of the parties, and not by law. It is either a part of their *aggregatio mentium*, or it is not; and if it is not, the law does not append it, and an attempt, by the holder, to make the contract negotiable, without the consent of the maker, avoids it.

5 *Alabama*, 370, *Nance* vs. *Leary*.
Dudley's (Ga.) Rep., 243.
1 *Nott & McCord*, 102, *Pepoon* vs. *Stagg*.
3 *Cranch's C. C. R.*, 330, *Bank* vs. *Moore*.
2 *Lansing*, 477, *Whitney* vs. *Snyder*.

Even though the contract is by its terms performable in favor of its bearer, yet if it is apparent that the parties did not intend that possession alone should be proof of ownership, it is not negotiable (7 *Wallace*, 392, *R. R. Co.* vs. *Howard*). Although Acts of Parliament and of Legislatures have made contracts for the payment of money to a named payee, or order,—such as bills of exchange and promissory notes

—negotiable, they have made them so in recognition of "the custom of merchants" (3 *Kent*, 71 *to* 74). And the right of a contractor to restrict the negotiability of an otherwise negotiable instrument is recognized by law.

14 *Peters*, 318, *Fowler* vs. *Brantley*.
1 *Wash. C. C. R.*, 512, *Brown* vs. *Jackson*.
1 *Wallace*, 166, *Sweeney* vs. *Easter*.
Session Laws of New York, 1858, *p.* 532, *sec.* 6.

3. The contracts in question, at the time they were stolen from the plaintiff, as well as at the time when they were issued by the company, had not been put by the makers in such a condition that they could be, as entireties, transferred by delivery. On the contrary, the company had imposed a lawful restraint upon such transfer, by requiring that transfers of the evidence of title to the agreement should be made on its books, and by directing, in its articles of association (*fol.* 88), *that the scrip should always accompany the bond*. This was a part of the contract between the parties. And the holder himself, not having signed the power of attorney endorsed on the back, had done nothing to make it transferable by delivery, even if it was the intention of the company to put it in his power to do so. Therefore it was not negotiable in any sense. It was, in fact, a registered bond.

Fifth.—Conceding that the instruments were promissory notes, and were, at the time of the theft, in such condition that the owner, in pursuance of

the implied or express intent of the obligors, could have transferred a title to them by delivery, without mutilating them, it does not follow that he could mutilate and separate them, and convey a good title or good titles to fragmentary portions of them.

Such mutilation, giving the contract a different legal effect from what it otherwise would have had, —making a part of it negotiable when it was not so made by the maker, substituting for the contract issued by the party a different one—would have deprived the plaintiff and his transferees, even if the latter were *bona fide* holders for value, of the right of recovery upon either fragment.

See authorities referred to on pp. 11 *and* 12, *and also—*

11 *Rep.*, 26 *b*, *Pigott's case.*
Coxe's (*N.J.*) *Rep.*, 447, *Price* vs. *Tallman.*
4 *Term R.*, 320, *Master* vs. *Miller.*
10 *East*, 431, *Knill* vs. *Williams.*
11 *Mass.*, 312, *Homer* vs. *Wallis.*
4 *B & Ald.*, 197, *Corrie* vs. *Halsall.*
7 *S. & R.*, 505, *Stephens* vs. *Graham.*
13 *Pickering*, 165, *Wheelock* v. *Freeman.*
11 *N. H.*, 182, *Haynes* vs. *Dennett.*
24 *Wendell*, 374, *Nazro* vs. *Fuller.*
3 *Barb.*, 374, *Bruce* vs. *Wescott.*
40 *Barbour*, 16, *Dewey* vs. *Reed.*
25 *Eng. Law & Eq. Rep.*, 123, *Burchfield* vs. *Moore.*
4 *Gray*, 95, *Agawam Bank* v. *Sears.*
1 *Allen* (*Mass.*) 561, *Wade* vs. *Withington.*
Do. 477, *Fay* v. *Smith.*
2 *Cranch's C. C. Rep.*, 346, *Bank* vs. *Patterson.*

This has been held to be so, even though the alteration may not seem to prejudice the maker.

32 *Eng. L. & E.*, 162, *Gardner* vs. *Walsh.*

The party who has the custody of an instrument made for his benefit, is bound to preserve it in its original state.

Coxe's (N. J.) Rep., 447, *Price* vs. *Tallman.*
4 *Cranch*, 60, *O'Neale* vs. *Long.*
6 *Cowen*, 71, *Lewis* vs. *Payn.*
11 *Meeson & W.*, 778, *Davidson* vs. *Cooper.*
13 *Do.*, 343, *Do.*

If a $5 bank bill were cut in two, would the court say that the holder could put each half in circulation by itself, so that each transferee could maintain an action for $2.50 against the promissor?

This question is answered in the negative in
16 *Johnson*, 121, *Willard* vs. *Sperry.*
16 *N. Y. R.*, 548, *Secor* vs. *Sturgis.*
54 *Barbour*, 191, *Church* vs. *Brown.*

Sixth.—The plaintiff is entitled, if the instruments in question are promissory notes, to the benefit of the rule, that if a negotiable note is mutilated or torn in two, neither fragment is negotiable; and if either is stolen or lost, the finder or thief acquires no title, or else takes what he does get in subordination to the rights of the original owner; and payment of the whole to the original owner upon production of the fragment left in his possession discharges the promissor from the debt.

16 *Niles' Register*, 360, *Armat* vs. *Union Bank.*
6 *Munford*, 163, *Bank of Virginia* vs. *Ward.*
2 *Nott & McCord*, 464, *Patton* vs. *State Bank.*
4 *Randolph*, 186, *Farmers' Bank* vs. *Reynolds.*

6 *Wendell*, 380, *Hinsdale* vs. *Bank of Orange*.
4 *Sneed*, 167, *Union Bank* vs. *Warren*.
1 *Daly* (*N. Y. Com. Pleas*), 314, *Martin* vs. *Blydenburgh*.

Seventh.—The plaintiff is also entitled to avail himself of the principle, that even if one half of the obligations in question passed to the thief or his transferees, such assignment by theft did not transfer the *legal* title to any of the demand, but the whole legal title remained in the original payee. This principle is illustrated in the case of a promissory note of which the payee assigned, by endorsement, one portion to one person and another portion to another.

2 *B. Monroe*, 81, *Ellidge* vs. *Straughn*.

Eighth.—It was conceded by the learned Circuit Court, in its opinion in this case (*fols.* 173, 176, 177), as well as by the learned counsel for the appellees in their brief, and by the Court of Appeals of New York, in *Welsh* vs. *Sage*, 47 *N. Y. R.*, 143 (a case on which the appellees rely), that the defending banks did not acquire, as against the company, nor as against the plaintiff, the option of turning the scrip certificates into full paid stock upon surrender of the bond.

From this concession, if the other conclusions of the Circuit Court were correct, these consequences follow :

1. Either the convertible privilege has been extinguished; or,

2. It still survives in the hands of the plaintiff, he not having parted with it, and the company not having complied with its own obligation in that respect; and in the latter case,

3. The defendants must have acquired what they did acquire, *sub modo*, subject to the exercise by the plaintiff of the option which he still retains, and their detention of the bonds is an unjust obstruction to the exercise, by him, of the option; and,

4. Being entitled to the benefit of the agreement, he is entitled to the paper on which it is expressed; or,

5. As *bona fide* purchasers for value, they are entitled to have the plaintiff's option transferred to them.

The Circuit Court, however, did not push its view to either of these conclusions, but left the parties in a singular predicament. The plaintiff is entitled to the option, but must buy the money contract. The defendants are entitled to receive money, but not to convert the scrip into stock. The plaintiff is entitled to vote, but has not the right (originally intended to accompany the privilege of voting) of collecting his principal or interest The defendants are entitled to principal and interest in money, but are excluded from the privilege (originally intended to accompany the money contract) of voting. The company must treat the plaintiff as one of its members, but not as a creditor, and must treat the defendants as creditors, but not as members. Thus not only the

titles to the contract, but its obligations, are altered and diffused into an uncovenanted for multiplicity and diversity, and all at the will of a thief.

It is submitted that the logical seqence from the view taken by the learned Circuit Court was that if there was any part of an entire and indivisible contract to which the defendants failed to acquire title, then there was no part to which they did acquire such title. In short, that if they bought, in good faith, but from a thief, one-half of the paper on which a $5,000 bond was written, they did not own it, so long as the owner retained title to and possession of the other half.

See authorities under sixth point.

Ninth.—The appellees rely upon the indisputable, and, in this case undisputed, truth that there is a certain class of instruments to which a thief may convey a good title against the will of the owner.

The appellant has endeavored to show that:

1. These contracts did not, as issued, belong to that class of instruments.

2. If capable of being converted, by the act of the plaintiff, into instruments of that description, they had not been so converted.

3. They were incapable of being converted, even at the will of the plaintiff, into instruments of that description.

4. They are incapable of being converted, even at the will of the plaintiff, into two contracts instead of one.

5. It is not enough for the appellees to show that a thief may do what the true owner may do; that is, transfer by delivery an instrument which, by the maker's consent, has acquired a negotiable form; but they must show that a thief can do what the true owner cannot do; that is, make an instrument negotiable which was not so intended; transfer it by delivery when its own terms require it to be transferred in writing, and transmute it from one contract performable in favor of one person into two contracts performable in favor of two distinct persons.

Up to this point, the appellant's counsel has discussed only the question of title, and the efficiency of the means used to acquire title. The view thus far presented is quite independent of the question of notice; that is, the substance of what has been submitted is, that whether the defendants knew or not, or believed or not, that the contracts were stolen, or that there was any defect in the title of those with whom they dealt, they did not in fact acquire title, because the means which were used to give them title were not, in the eye of the law, efficient for that purpose. What remains to be said, relates to

The fact and the effect of notice of the plaintiff's title, and of the theft.

First.—The appellant is enabled to start with the concession made to him by the court below, that he did not part with, and that the defendants did

not acquire, everything which the contracts purported to secure to him, to wit, the convertible privilege; but that this was retained by him.

Second.—The question is not, whether the defendants had knowledge of facts, *dehors* the instrument, impeaching the title of their vendor; nor is it a question whether they *took* notice. The question is, whether notice *was given* of the conceded fact that the appellant retained the privilege or option of conversion, in such form and shape, that if the defendants did not act upon it, they must be deemed to have willfully shut their eyes to means of knowledge.

14 *Peters*, 318, *Fowler* vs. *Brantly*.
11 *Wallace*, 107, *New Albany* vs. *Burke*.

Third.—The question what constitutes notice, is a question of law.

20 *Howard*, 365, *Goodman* vs. *Simon*.
29 *N. Y. R.*, 249, *Birdsall* vs. *Russell*.

In this case, it is important only in case the court should hold that the contracts were capable of transfer by delivery and in fragments.

Fourth.—The plaintiff and the railway company gave continuing notice to every one under whose inspection the commodity came, that the whole obligation was not expressed on one piece of pa-

per; that the contract was not merely one for the payment of money, and that it possessed peculiar properties and value.

1. Each contract was endorsed, "7 per cent., convertible;" thus conveying information that it was something more than a bargain for the payment of money.

2. Each contained a plain reference to the articles of association and the Laws of Wisconsin, which are in evidence in this case, although they were not in evidence in Welch *v.* Sage. These articles showed that holders of scrip had substantial rights.

3. Each money contract contained an agreement in relation to a paper recited to be "hereto attached," which agreement was incapable of being enforced without possession of the paper so attached.

4. According to the opinion of his honor the circuit judge, which is supported by the authorities, the effect of these notices was, that the paper stated to be attached must be deemed to have been present to the senses of the defendants as much as if it had been physically produced. In other words, the defendants are chargeable with knowledge of its existence and contents. Its contents were, that Charles B. Hotchkiss owned it, and that it was not transferable, except by assignment. The effect is the same as if Mr. Hotchkiss had been at hand, asserting his title.

5. Actual notice and constructive knowledge of the contents of the scrip, coupled with its physical absence, are equivalent not only to a pres-

ent assertion of title by Mr, Hotchkiss, but to a refusal to transfer that title. Such actual notice and constructive knowledge, coupled with the physical absence of the scrip, conveyed information also to the purchaser of a concealment, by his actual vendor, of the indicium of title. 4 N.Y. Sup. Court Reb. (by Thompson & Cook) p. 64. Mills v Potter.

6. It is not paradox to say that the physical absence of what is constructively present, or of what ought to be present to make a transfer perfect, is a badge of fraud and a warning to a purchaser.

7 *N. Y. R.*, 141, *Brown* vs. *Blydenbrough*.
26 *N. Y. R.*, 18, *Kellogg* vs. *Smith*.

The theft, in this case, was plainly proclaimed: as it would be in another case visibly demonstrated by the brand "U. S." on a stolen artillery horse; or by the name of the owner on an abstracted umbrella in the hands of a person who did not respond to that name.

7. It may illustrate these propositions to suppose that when the contracts (which, in the body of them, refer to the "*annexed coupons*" fol. 132) were offered to a purchaser, the coupons had all been cut off. Would not the purchaser take such parts as were offered to him, with notice that the right to collect interest had been retained or separately disposed of? Would the purchaser be considered either to have bought the coupons or to have rightfully inferred that the owner had destroyed them?

Fifth.—The defendants must be deemed to have known whatever they would have known if the scrip had been present. The least they can be deemed to have known is, that the scrip had been detached. They knew, therefore, that the property had come through some person who had wantonly diminished its value. The natural inference was that that person was a thief.

Sixth.—The defendants say that the convertible clause created a mere privilege. It may be, in truth, called a privilege or an option. By depreciating its value, its validity and existence are not destroyed. Our point is that, whatever it is, Mr. Hotchkiss still owns it; the defendants have not acquired it; they knew that they did not acquire it and that he still retained it; the scrip was the key to the combination; and inasmuch as the contract was an indivisible unit, he owns the whole. If he is not entitled to recover the money promise, it follows that the defendants are entitled to recover the scrip.

Seventh.—Although the defendants had notice of the original existence of a convertible privilege, and do not testify that in fact they believed or inferred that the scrip had been destroyed by its true owner, yet they argue that to invalidate their title the plaintiff must show that they had notice that he had not destroyed it, and that in the absence of such notice they were entitled to infer that he might have destroyed it.

The answer to this is, that notice of the existence of a title is notice of its continuance, and

that the defendants were not entitled to infer, except at their peril, the occurrence of events inconsistent with the notice given.

The defendants could have reasoned with themselves, in spite of information to the contrary, that the plaintiff was dead, but that would not counteract the effect of notice that he was living. It was easier for them to reason that the scrip had been stolen than the contrary, because it was reasonable to infer that the owner would not wantonly do what would diminish the value of his property.

Eighth.—It is respectfully submitted that the learned Circuit Court erred in "holding that if the scrip certificates and the articles of association had been before the officers of the banks who took these bonds, when they took them, then no information would have been conveyed that the bonds were not transferable by delivery," and in deciding the case upon that view of it.

1. This assumes that the promise to pay money was separable and transferable by delivery, which is the point in controversy.

2. What is called the bond (being so much of the instrument in question as came to the possession of the defendants), expressly informed them of the existence of annexed scrip, and advised them that the possession of that scrip was essential to the enjoyment of all the rights contracted for in the instrument.

3. The defendants concede that they not only did not get—that is, that there did not pass to them by delivery—the right of conversion or of voting, but they say they did not wish nor intend to get those rights.

4. The intention of the scheme, as evinced by the articles of association, was that the company should owe money to those who were registered as stockholders and who possessed the right to vote, and that the right to vote should belong to those registered stockholders to whom it owed money. The two rights were to be concurrent; the articles of association (*fol.* 85) provide for the "scrip preferred stock" always standing on the books in the name of some person, and for its accompanying each mortgage bond.

5. This being so, how can it consistently be said that if Mr. Hotchkiss had exhibited the scrip and the articles of association (as he must be deemed to have done) at the time when the thieves' vendees were negotiating with the defendants, they would not have been informed that it was proposed to violate the articles of association by severing what was designed to be inseparable? How could they have failed to see that Mr. Hotchkiss also did not intend to pass anything by delivery, but meant to retain in his own hand the option and evidence of title to stock which overreached and controlled the agreement to pay money? Is it possible to conceive that they would have bought if such an exhibition had been made?

6. The conclusive evidence that the scrip, until endorsed or transferred, was a restraint upon negotiability, consists in the fact that the thieves tore it off before they offered the bonds for sale. Their reasoning was different from that of the Circuit Court. They argued that if Mr. Hotchkiss stood by, exhibiting the scrip, or if they did so on his behalf, the banks would not buy.

Ninth.—It is also respectfully submitted that the learned Circuit Court erred in holding (*fol.* 176) that the holder of the bond could, at maturity, demand payment of the principal without producing the certificate. Payment of the indebtedness acknowledged by the bond, would as much satisfy the privilege of conversion as it would the money debt, and the debtor would be as much entitled to the production and cancellation of the whole evidence of debt as any part of it.

Coxe's (N. J.) Rep., 447, *Price* vs. *Tallman.*
2 *Cranch's C. C. R.*, 346, *Bank* vs. *Paterson.*

The authorities cited *supra, p.* 15, are in point here.

Tenth.—If Welch *v.* Sage, 47 N. Y. R., 143, decided anything in conflict with these positions, it would still not be controlling. The question is one of general commercial law, unaffected by local legislation or usages.

16 *Peters, p.* 1, *Swift* v. *Tyson.*
13 *Howard*, 268, *Neves* v. *Scott.*
19 *Wallace*, 666, *Pine Grove* v. *Talcott.*

Eleventh.—But Welsh *v.* Sage does not decide anything in conflict with what is here contended for.

1. That was not a suit by a stockholder against the company for the purpose of asserting his rights against the company.

2. It was a suit only by a person who had got manual possession of a portion of one of the company's obligations, against a third person who detained it from him. His rights as against the company were not in question.

3. The implication, in the opinion of the court in Welsh *vs.* Sage, is not that Welsh acquired the option. On the contrary, the implication is that he did not acquire it, because it was not (as the court assumed) worth any more than a Confederate bond would be, and therefore he didn't want it. The court did not decide that he owned the scrip, or that he could exercise the convertible privilege. The utmost decided was, that, as against Sage, he held the company's promise to pay money. This is not inconsistent with the idea that if the owner of the scrip came forward and claimed the right of conversion, Welsh's claim to the money would have to give way.

4. Welsh *vs.* Sage was decided upon assumptions, guesses, inferences and fancies, for which there is no room in this case. One of those was that Milwaukee & St. Paul preferred dividend paying stock, issued in satisfaction, *pro tanto*, of a mortgage debt, was not worth more than Confederate bonds. Another was that the scrip certificate was usually and in practice a blank. In this case, the contrary is shown to be the fact.

5. In Welsh *vs.* Sage, the articles of association, the books of the company, and the successive transfers were not in evidence. In this case, they are.

6. The learned judge who delivered the opinion

of the Court of Appeals, says (*p.* 149) that the bond, on its face, declares that *the bond* may be converted into full paid scrip preferred stock, upon the surrender of the bond and unmatured interest warrants. If this is a correct quotation from the language of the bond then in question, it was a different instrument from those in question here. If the bond there in question was the same in form with those in question here, the quotation is incorrect.

7. The same learned judge remarks (*p.* 148) that the certificate constitutes no part of the bond, and that the bond is entire and perfect without it. If this means only that certain words may be extracted from the entire instrument, which, taken by themselves, would constitute an obligation perfectly expressed and binding without reference to anything else, the remark is true. But if the observation means that the entire spirit and meaning and obligation of the whole contract is expressed in the acknowledgment of indebtedness and the promise to pay it, the remark is obviously a mistake; as much so as it would be to say that the whole obligation was expressed in one of the coupons. It is submitted that Hodges *vs.* Shuler was misapplied by the learned judge. What was held in Hodges *vs.* Shuler was that the alternative expressed in the note did not alter its character as a note. It was not held that the whole contract was expressed in the promise to pay money.

8. The certificate contained in the report of the case of Welch *vs.* Sage, appears to have been blank as to the name of the owner.

9. In Hodges *vs.* Shuler the whole benefit of the contract went with the transfer of one paper. Not so here.

The Shoe and Leather Bank, in its answer (*fol.* 41), objected to the bill as multifarious. The point was not raised in argument in the Circuit Court, and is answered by

4 *Cowen*, 682, *Fellows* vs. *Fellows*.
17 *N. Y. R.*, 592, *N. Y. & N. H. R. R. Co.* vs. *Schuyler*.
53 *N. Y. R.*, 298, *Simar* vs. *Canaday*.

It is evident also that no action at law would afford a complete remedy in this case.

It is respectfully submitted that the plaintiff was entitled to a decree, as prayed for in his bill.

F. N. Bangs,
Of Counsel for Appellant.

EVENING POST STEAM PRINTING HOUSE, 41 NASSAU STREET, COR. LIBERTY ST.

U. S. Supreme Court.

CHARLES B. HOTCHKISS,
Appellant.

vs.

THE NATIONAL SHOE AND LEATHER BANK, ET AL.,
Appellees.

Brief for Plaintiff in reply.

By consent of the counsel for The National Shoe and Leather Bank, the appellant is permitted to put in a brief reply to so much of the brief on the part of that bank as raises the point that this court has not jurisdiction to review so much of the decree of the Circuit Court as was in favor of that appellee.

It is necessary, by way of preface, to recall the attention of the court to the leading position taken by the appellant.

That position is not that the certificate of scrip preferred stock is, in and of itself, a contract of the same nature as the railway company's obligation to pay money; but it is that the agreement on the part of the railway company, expressed in the paper of which

the defendants have possession, to turn that scrip into full paid preferred stock, is an agreement which has neither been performed by the railway company, nor released to it, nor acquired by the defendants; and inasmuch as the money debt was intended by the company to be payable only to the holder of the convertible privilege, the defendants have not acquired the claim for the money any more than they have the convertible privilege.

The court will, therefore, observe that the injury which the plaintiff complains of as having been inflicted on him by The Shoe and Leather Bank, is that that bank not only deprives him of the convertible privilege, but it deprives him of the right to collect the annual sum of seventy dollars from May, 1869, (the date at which interest was first payable after the robbery) to May, 1893, (the date of the maturity of the bonds). Such interest amounts to $1,680, and in addition to that, the plaintiff is deprived of the right to collect $1,000 at the maturity of the bond, so that he suffers a loss of $2,680, if the defense on the part of The Shoe and Leather Bank is successful.

But the comprehensive object of the suit is to obtain redress for the plaintiff for the injury done him by one robbery. The measure of the damage, at the time it happened, was more than $3,000, exclusive of interest. There is but one decree in this case, and but one appeal; the injury done the plaintiff by the decree below, if that decree was erroneous, exceeded the sum of three thousand dollars. If the decree is reversed, and the plaintiff finally recovers, the defendants may have to contribute unequal amounts to the recovery—but the plaintiff will have established but *one* right, and obtained the benefit of only *one* remedy.

F. N. Bangs,
Of Counsel for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM—1874.

No. 219.

CHARLES B. HOTCHKISS,
Appellant,

vs.

THE NATIONAL SHOE & LEATHER BANK AND THE TRADSEMEN'S NATIONAL BANK,
Respondents.

Statement and Brief for the Tradesmen's National Bank, on the Appeal of the Complainant from a Decree of the Circuit Court of the United States for the Southern District of New York.

JOHN S. WOODWARD,
Of Counsel for the TRADESMEN'S NATIONAL BANK.

NEW YORK:
EVENING POST STEAM PRESSES, 41 NASSAU ST., COR. LIBERTY.
1875.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

In the Supreme Court

OF THE UNITED STATES,

October Term, 1874.

Charles B. Hotchkiss, Appellant, *vs.* The Shoe & Leather National Bank of the City of New York, and The Tradesmen's National Bank.	No. 219. In Equity.

Brief and Points for the Tradesmen's National Bank.

Substance of Bill of Complaint.

The bill of complaint in this case was filed to recover and compel the surrender to the complainant of three several coupon bonds, issued by the Milwaukee & St.

Paul Railway Company for one thousand dollars each, dated respectively May 6th, 1863, and severally numbered 1,947, 2,070, and 2,425, each payable to the bearer thereof, on the first day of January, A. D. 1893, at the office or agency of the company, in the city of New York, with interest from the first day of July, 1863, at the rate of seven *per centum* per annum, payable semi-annually, at the office or agency of the company, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due.

And also to compel the defendant The Shoe & Leather National Bank, and the Tradesmen's National Bank to account for any moneys collected by them respectively upon the said bonds in the said bill of complaint, styled "*contracts and obligations.*"

The *coupons* or warrants for the payment of the semi-annual interest, as will be seen by reference to pages 9, 11 and 37 of the printed record, were also, *on their face*, made payable "to the bearer."

One of these bonds, with its coupons attached (viz., that numbered 1,947), was, at the time of the filing of the bill of complaint, in the possession of and claimed by the defendant The Shoe & Leather National Bank.

The others (two) being those numbered 2,070 and 2,425, with their coupons or warrants for the semi-annual interest attached, were claimed and held by the defendant The Tradesmen's National Bank.

In the body of these several bonds, following the statement of indebtedness of the railway company and their promise to pay the principal and interest, is printed the following, viz. :

"The said company also agree to make the scrip
"preferred stock attached to this bond full paid stock
"at any time within ten days after any dividend shall
"have been declared and become payable on said pre-
"ferred stock, upon surrender to the company, in the
"city of New York, of this bond and the unmatured
"interest warrants."

The complainant, by his bill, claims to have been the owner of these three bonds, and that on or about the 29th or 30th of November, 1868, they were stolen from him.

That the Tradesmen's National Bank acquired the possession of the two bonds Nos. 2,070 and 2,425 in *bad faith*, with *notice, from the contents and references thereof*, of the issue and attachment to each bond of a certificate for certain shares of scrip preferred stock, which certificates, it is alleged, have been *fraudulently* and *feloniously* detached from the bonds.

SUBSTANCE OF ANSWER OF THE TRADESMEN'S NATIONAL BANK.

The defendant the Tradesmen's National Bank, by their answer, put in issue all the material averments of the bill, except that they admit:

1. The making and issue of the bonds, with the interest warrants or coupons attached.

2. That the bonds had not been canceled or surrendered by the complainant.

3. That the defendant the Tradesmen's National Bank is the holder of the bonds No. 2,070 and No. 2,425, *without* any certificates of preferred stock attached; and continues to retain them after demand by complainant for the delivery of the same to him.

4. That the complainant was prevented from collecting the coupons for interest by reason of the bank's possession of them.

5. That the bank did demand the payment of the coupons as they matured, and that the railway company declined payment.

The defendant the Tradesmen's National Bank, by

their answer, *deny* that there are any equities to sustain the bill as against them.

They also state and claim that they *received and became the owner and holder* of the two bonds Nos. 2,070 and 2,425 and coupons attached, *in good faith, in the usual course of business, for value* and *without notice* or knowledge of the complainant's title or claim to the bonds, or the loss or theft of them.

And they set forth the facts as to the time and manner and consideration of their acquisition of those two bonds, and the coupons or interest warrants attached to them.

CASE.

The appellant, Charles B. Hotchkiss, was on and prior to November 30th, 1868, the owner of, and possessed, the two coupon bonds of the Milwaukee & St. Paul Railway Company for $1,000 each, Nos. 2,070 and 2,425, with the then unpaid interest warrants or coupons thereto attached.

Each of these bonds contained on its face a statement of the indebtedness of the railway company in the sum of one thousand dollars, and a promise of payment, to the bearer, of that sum, on the first day of January, 1893, and of the interest at seven per cent. per annum, from 1st July, 1863, semi-annually, on presentation and surrender of the annexed coupons as they severally became due :

And immediately following, each bond also contained the following, viz. : " The said company also agree " to make the scrip preferred stock, attached to this " bond, full paid stock at any time within ten days " after any dividend shall have been declared and be- " come payable on said preferred stock, upon surren- " der to the company in the city of New York of this " bond and the unmatured interest warrants."

To each of these two bonds was attached, with a pin, a certificate or scrip of preferred stock similar to that referred to by the appellant, Hotchkiss, testifying in his own behalf, and in the form set forth and annexed to his deposition at page 29 of the printed record.

Upon the face of each bond also appears the following, viz.: "All of which bonds are executed and de-
" livered in conformity with the laws of Wisconsin,
" the articles of association of the company, the vote
" of the stockholders and the resolution of the board
" of directors. And the *bearer* hereof is entitled to the
" security derived from a mortgage or deed of trust
" duly executed and delivered by said company to
" Isaac Seymour and N. A. Cowdrey, trustees, convey-
" ing the entire property of this company, real and
" personal, and all its rights, franchises and immuni-
" ties, dated May 6th, 1863; and also to the benefits
" to be derived from a sinking fund established by and
" in said mortgage or deed of trust, of all such sums of
" money as are received from the sales of lands donated
" or granted to this company by the United States or
" by the State of Wisconsin."

On the face of each bond the number of it appears in two places, and also the words "sixty coupons
" attached, last six months' interest, $35, payable with
" bond."

Each coupon was made payable "to the bearer."

The face of the bond being uppermost, if the bond was folded over from right to left by a fold in the middle of its width and running from top to bottom, so as to bring one half of the back of the bond uppermost the half was found to be divided, by two up and down lines, into three columns, each with a printed heading, the first column being headed, "Date of transfer," with the figures "186" a short distance below, to the left; The second column being headed, "To whom trans-

ferred," and the third column being headed, "Attest by tranfer agent;" and in each column were fourteen horizontal lines.

There were no entries in any of these columns when the bonds left the possession of the appellant, nor at the time of their production in evidence in this case.

On the other half of the back of one of these bonds were the words "$1,000, Bond No. 2,070. First mort-"gage Milwaukee & St. Paul Railway Company, 7 per "cent. convertible. Interest, January and July, due "1893."

And also a certificate subscribed by the trustees named in the mortgage authenticating the bond in conformity with the requirement of the bond in the last clause thereof.

The bond No. 2,425 had like endorsements, but substituting its number (2,425 instead of 2,070).

The section of the Statute of Wisconsin and the articles of association of the Milwaukee & St. Paul Railway Company, subject to which, as appears on their face, the bonds were made and issued, are set forth in pages 56 to 64 of the printed record; and the material portions thereof, in the opinion of his honor Judge Blatchford, at pages 87 to 89 of the printed record in this case.

Up to the time the two bonds Nos. 2,070 and 2,425 left the possession of the appellant he owned and had in his possession two certificates, each for ten shares of the scrip preferred stock, one pinned to each bond, duly issued to accompany those bonds, one for each. Which certificates were made transferable only on the books of the company by Hotchkiss in person or by attorney, on surrender of the certificate. As appears, also, on their face, these certificates were issued and received subject to all the terms, conditions and limitations of the company, were duly signed by the presi-

dent, and countersigned by the transfer agent and by the registrar of transfers of the company, and there was endorsed upon each of them a printed blank power to tranfer, the blanks not being filled up. When these certificates left the possession of the appellant they were not attached to the bonds in any other way than by pins.

The bonds and their coupons were severally printed on one sheet each, and thus were actually attached—the coupons to the bond.

It is an admitted fact—at all events sufficiently proven on the part of the appellant—that he never transferred any of the shares of scrip preferred stock represented by the two before mentioned certificates so attached by pins to the bonds Nos. 2,070 and 2,425, and that those two certificates are still now outstanding, and have never been surrendered to the company; that the appellant never signed either of the blank powers to transfer endorsed thereon; and that the two bonds, 2,070 and 2,425, with the unpaid coupons and the said certificates pinned thereto, and accompanying the same, were stolen from the appellant's possession, by robbery, on 30th November, 1868.

On 22d January, 1869, The Tradesmen's National Bank received from one B. Starr Midgley, who was then, and had before been, a dealer in that bank, one of the two bonds, Nos. 2,070 and 2,425, and loaned to him, on his note, with the said bond as collateral security, the sum of eight hundred dollars; and on the 29th of January, 1869, the same bank received from said Midgley the other of said two bonds, and loaned to him eight hundred dollars more, taking from him his note for sixteen hundred dollars, and thereafter holding the two bonds as collateral security for the $1,600 note. That note was several times renewed, until some time after 8th of December, 1869, when the bank made an additional loan to Midgley of one hundred and fifty dollars, on the security of these two bonds, and on the 4th of February, 1870, took his note

of that date, payable on demand, for $1,791.75, with interest, and holds that note and the said two bonds (Nos. 2,070 and 2,425) as collateral security.

The loans were made by this bank to Midgley on the faith of these, as "coupon bonds payable to bearer."

At the time they were received there was no paper or document attached to them (no certificates or scrip of preferred stock).

The interest of the Tradesmen's National Bank in the two bonds is $1,791.75, with interest from February 4, 1870.

The officer of the bank who had the charge of this transaction with Midgley (Halsey, their cashier) states that the bank had never collected anything on these securities; they had presented the two, then matured, coupons to the company for payment, and payment was declined; those coupons he finds attached to the bonds by a pin; they were detached for the purpose of collecting the money on them.

He first heard of the appellant's claim in suit here somewhere about the 1st of February (1870), when appellant called and made inquiry. It was the first intimation he ever had of anything being wrong with the bonds.

First Point.—THE BONDS OF THE RAILWAY COMPANY IN QUESTION, WITH THE COUPONS ATTACHED, PRINTED ON THE SAME SHEET, AND THE CERTIFICATES OR SCRIP OF PREFERRED STOCK, PINNED THERETO, OR OTHERWISE ATTACHED, DO NOT, IN FORM AND SUBSTANCE, CONSTITUTE ONE SINGLE INSTRUMENT OR AGREEMENT. THE CERTIFICATE OR SCRIP OF PREFERRED STOCK WAS NO PART OF THE BOND. THE BOND COULD BE TRANSFERRED TO ANY ONE, AND THE ORIGINAL HOLDER RETAIN, RELEASE OR SURRENDER THE SCRIP, IF SO DISPOSED.

The articles of association of the railway company do not treat the bond and certificate or scrip of preferred stock as one instrument, but as separate and distinct. It was to accompany the mortgage bonds, but is not required to form an integral part of them.

The 3d subdivision of the articles of association (at page 58 of the printed record) defines this scrip. And the mode and manner of its issue is prescribed and the rights and interests of the holders of it stated.

And subdivision 6 of the same articles, expressly declares that the *bonds* shall be convertible at the option of the holder.

And that *bondholders*, as such, should be authorized to *vote* in all stockholders' meetings *like stockholders*.

Though the interest upon the principal moneys, mentioned in the bond, is an incident to, and grows out of the principal, yet the coupons being, on their face, expressly made payable to the bearer thereof, may be detached and passed by delivery, and the holder may collect the same at maturity, independently of any ownership of the bond or obligation for the principal sum.

So, too, the bond or obligation being a promise to pay the principal sum named in it, with the interest, to the bearer, the holder may, at maturity, collect the principal sum independent of the possession or ownership of the coupons.

Each of them, the bond and the coupon, is a promise to pay the moneys specified, absolutely, at a fixed time and to the bearer thereof.

There is nothing on the face of the bond, or of the coupon, or in the articles of association which,

under any circumstances, fixes upon the holder any duty to accept anything in payment or discharge of them but the moneys specified therein, nor to surrender the bonds, or gives the right or option to the railway company to require a surrender of them except upon actual payment, save only where the holder elects of his own option to convert them at the time prescribed.

The certificate or scrip of preferred stock is not a part of the bond, either as a promise to pay money, or to regulate, limit or restrain such payment. Its office is of an entirely different character. It affords evidence, under certain conditions, of an interest to a specified extent or in a fixed proportion, to which the party named in it may be entitled out of the property and assets of the corporation, if it shall be in his power and he shall elect to surrender the bond and unmatured coupons, and make it, by this converson, full paid preferred stock.

And even in connection with the agreement and reference to it in the bond, it cannot have other effect than such as, on its face, appears to have been the clear intent of the corporation which issued it—that is, to afford the bearer or holder of the bond and unmatured coupons an opportunity, at his option, to change the character of his claim upon the corporation from that of a creditor to a participant in the property and assets, with such other rights and priviledges as appertain to the holders of preferred stock.

Having reference to the articles of association of this corporation (the railway company), it would seem quite clear that the bond is made one contract, and the certificate quite another; by these, the transfer of the stock can be made only on the

books of the company, but in reference to the bonds no such provision is made, nor is any registry of the ownership or transfer required.

The complainant, had he continued to hold the bonds until maturity, and had not parted with the coupons, could collect the interest as it matured, and the principal of the bond when it shall fall due, irrespective of his possession or surrender of the certificates or scrip for preferred stock.

Second Point.—BONDS, COUPONS AND STOCK, EACH HAVE A DISTINCT AND WELL DEFINED LEGAL CHARACTER, AND THIS CLEARLY ESTABLISHES THEM AS SEPARATE INSTRUMENTS.

1. COUPONS are severable from the bonds to which they are attached when issued.

They are negotiable securities, transferable by delivery.

Suit may be maintained upon them without production of the bond to which they were attached.

Commissioners of Knox Co. *v.* Aspinwall (21 How. U. S. R., 539).
Connt. Mut. Life Ins. Co. *v.* Cleveland R.R. Co. (41 Barb. N. Y. R., 22).
2 Redfield on Railways, 523.
1 Parsons on Contracts, 240.

2. COUPON BONDS (railroad or municipal) payable to bearer, pass by mere delivery, and are negotiable instruments, and are, therefore, treated as negotiable papers.

A purchaser of them for value, before matu-

rity, in good faith, is unaffected by want of or defect in title of the vendor.

White *v.* Vermont & Mass. R. R. Co., (21 How. U. S. R., 575).

Mercer Co. *v.* Hackett (1 Wall. U. S. R. 83).

Gelpeke *v.* City of Dubuque (1 Wall., U. S. R., 176, 206).

Murray *v.* Lardner (2 Wall. U. S. R., 110).

Thompson *v.* Lee Co. (3 Wall. U. S. R., 327).

Morris Canal & Banking Co. *v.* Fisher (1 Stock. N. J. R., 667).

Same *v.* Lewis (1 Beas. N. J. R., 323).

Bank of Rome *v.* Village of Rome (19 N. Y. R., 20).

Commonwealth *v.* Commissioners of Alleghany Co. (37 Penn. St. R., 237).

3. A CERTIFICATE OF STOCK, which is not a contract for the payment of money, and is not in terms negotiable, is, *for those reasons*, a different thing, and is not placed upon the footing of commercial paper.

On the contrary, they are simply the muniments and evidence of the holder's title to a given share in the franchises of the corporation of which he is a member.

Edwards on Bills, &c., Ed. of 1857, p. 61.

Mechanics' Bank *v.* N. Y. & N. H. R.R. Co. (4 Duer. R., 480, S. C., 3 Kern., 13 N. Y. R., 599, at p. 629).

McCready *v.* Rumsay (6 Duer's Superior Ct. R., N. Y., 574).

Third Point.—THE POSSESSION AND TITLE TO THE CERTIFICATE CAN ONLY BE NECESSARY TO THE EXERCISE OF THE PRIVILEGE OF CONVERSION.

His honor Judge Blatchford, in his opinion, deciding this case below, comes to the conclusion (see printed record at pages 92 and 93) that the statement on the face of the bond, "that it is executed and delivered in conformity with the articles of association of the company," is notice to the party taking the bond of whatever those articles contain, in respect to the bond," and then referring to those provisions of the articles of association bearing upon the *issue of the scrip preferred stock* to accompany the mortgage bonds, that judge also concludes that:

"*The scrip certificate spoken of in the bond,* "*must be regarded as present to the view and* "*knowledge of any party taking the bond.*"

At page 94 of the printed record, the same learned judge in the same opinion says: "The registered owner of the scrip preferred stock could have these rights of a stockholder" (that is, to vote in the election of directors of the company, equally with the holders of full paid preferred stock).

"If, in addition, he should continue to hold the "bond designated in the certificate, he could, by "surrendering such bond, convert it, and at the "same time convert his scrip preferred stock into "full paid preferred stock. *But the company did* "*not require that the bonds should be registered or* "*that they should be transferable solely on the books* "*of the company,* or *that the debt evidenced by the* "*bond and the coupons should be transferable other-* "*wise than by the delivery of the same.* There is "nothing to that effect in the articles of associa- "tion, or in the bond, or in the certificate of scrip "preferred stock."

"The third article says that *the certificate is to accompany the bond, implying* that *the bond*, as an obligation for the payment of money, *is a complete instrument, without the certificate.*"

It is said by an eminent text writer on the law of contracts (2 Parsons on Contracts, 5th Ed., p. 517): "Any contract may consist of many parts, "and these may be considered as parts of one "whole, or, as so many distinct contracts, entered "into at one time and expressed in the same in- "strument, but not thereby made one contract."

In the case of *Hodges* v. *Shuler et al.*, 22 *N. Y.* (8 *Smith*), *Rep.*, *p.* 114, which was an action brought against the defendants as endorsers of the following promissory note:

"RUTLAND & BURLINGTON RAILROAD COMPANY.

"No. 253. $1,000.

BOSTON, April 1, 1850.

"In four years from date, for value received, "the Rutland & Burlington Railroad Company "promises to pay, in Boston, to Messrs. W. S. & "D. W. Shuler, or order, $1,000, with interest "thereon, payable semi-annually, as per interest "warrants hereto attached, as the same shall be- "come due; or, upon the surrender of this note, "together with the interest warrants not due, to "the treasurer, at any time until six months of its "maturity, he shall issue to the holders thereof, "ten shares of the capital stock in said company "in exchange therefor, in which case interest shall "be paid to the date to which a dividend of pro- "fits shall have been previously declared, the "holder not being entitled to both interest and "accruing profits during the same period.

"SAM HENSHAW,
"Treasurer.

"T. FOLLETT,
"President."

It was claimed on the part of the defendants that this instrument was not in terms or legal effect a negotiable promissory note, but a mere agreement, and that the endorsement of it in blank by the defendants operated, if at all, only as a mere transfer, and not as an engagement to fulfill the contract of the railroad company in case of its default.

The case coming before the Court of Appeals of New York, they held against the defendants on both these propositions, and Wright, J., in giving the opinion of the court, says, *inter alia*,

"The instrument on which the action was brought has all the essential qualities of a negotiable promissory note. It is for the unconditional payment of a certain sum of money at a specified time to the payee's order. It is not an agreement in the alternative to pay in money or railroad stock. It was not optional with the makers to pay in money or stock, and thus fulfill their promise in either of two specified ways; in such case the promise would have been in the alternative.

The possibility seems to have been contemplated that the owner of the note might, before its maturity, surrender it in exchange for stock, thus canceling it and its money promise, *but that promise was nevertheless absolute and unconditional, and was as lasting as the note itself.* In no event could the holder require money and stock. It was only upon a surrender of the note that he was to receive stock, and the money payment did not mature until six months after the holder's right to exchange the note for stock had expired. *We are of the opinion that the instrument wants none of the essential requisites of a negotiable promissory note.* It was an absolute and unconditional engagement to pay *money on a fixed day*, and although an election was given to the promisees, upon a surrender of the instrument six months before its maturity, to exchange

it for stock, *this did not alter its character* or make the promise in the alternative in the sense in which that word is used in respect to promises to pay."

In the case of *Andrews and al.* vs. *Hart an' al.*, 17 Wiscon. R., 297, which was an action to foreclose a mortgage executed by the defendant Samuel Hart and wife to the Racine, Janesville & Mississippi Railroad Company, to secure a note for $2,000, given by said Samuel Hart, and payable to said company or bearer, which note and mortgage, before maturity, were sold, assigned, transferred and delivered to the plaintiffs for a good and valuable consideration. At the time of the purchase and sale there was attached to the note and mortgage, and sold and transferred therewith, a bond or instrument in writing, under seal, by which the railroad company, for a valuable consideration, guaranteed to the holder thereof the payment of the principal of the annexed promissory note and mortgage, securing said note, executed by Samuel Hart to said railroad company or bearer, dated on the 12th day of April, 1855, payable in five years from the 10th day of February, 1855, with interest at the rate of ten per cent. per annum, *payable annually*, " and the said company further " guarantee to said holder the payment of the " interest on said note and mortgage *semi-annually*, " and that both the principal and interest thereof " shall be paid at their office in the city of New " York, and that said note and mortgage may be " transferred in connection with this bond (but " not otherwise) to any party or purchaser whom- " soever."

At page 306, *Dixon*, C. J. (delivering the opinion of the court), says: " The note is payable to the " *company or bearer*, and was, therefore, *transfer-*

" *able by delivery. The only circumstance* from " which an inference can be drawn unfavorable to " the claim of the plaintiffs, is that the transfer " was accompanied by a written guaranty of the " company, annexed to the note and mortgage, by " which the company engaged to the holder thereof " that the principal and the interest semi-annally " shall be paid at their office in New York. It " was likewise *provided in the guaranty that the* note " and mortgage might be transferred in connec- " tion therewith, *but not otherwise*, to any party or " purchaser whomsoever.

" After the case of Crosby *v.* Roub. 16 Wis., " 616, *it cannot be contended that this guaranty de-* " *stroyed, or in the slightest degree affected the negoti-* " *able character of the* note and mortgage. There, " the note was payable *to order*, and was trans- " ferred by the company as collateral security for " the payment of its negotiable bond to which it " was annexed. There was no formal endorse- " ment of the note. The transfer was effected by " words of assignment contained in the bond. " Here no indorsement was necessary, and the " guaranty made negotiable by express words *is* " *no more than a further security* which every pur- " chaser of negotiable paper may well take with- " out jeoparding his claim against the maker or " other party to the paper."

In the case of *Crosby* v. *Roub*, cited by the court in *Andrews and al.* v. *Hart and al.*, *supra*, the form of the guaranty contained the same provision as in the last mentioned case, *that the note should be transferable in connection with the bond, and not otherwise.*

In the case of *Welch* v. *Sage*, 47 N. Y. R., 143, which was an action of trover, brought to recover the possession of one of this same series of bonds,

Mr. Justice Peckham, in delivering the opinion of the court, at page 148, says:

"This certificate constitutes no part of the "bond. The bond is entire and perfect without "it." He then cites the case above referred to (Hodges *v.* Shuler, 22 N. Y. R., 118), and proceeds to say, "the admission of the debt and the "promise to pay, in the bond, are in no degree "qualified by the certificate. The statement in "regard to the certificate is simply *an addition* to "the bond; a promise to make the scrip preferred "stock attched to this bond, full paid stock at a "certain time upon surrender of the bond, and "the unmatured interest warrants."

In Ledwich *v.* McKim *et al.*, 53 N. Y. R., 307, at p. 313, Folger, J., says: "In Welch *v.* Sage, "47 N. Y., 143, the bonds were perfect and nego-"tiable without the certificate which had been "detached."

Fourth Point.—THE TRADESMEN'S NATIONAL BANK RECEIVED THE COUPON BONDS, IN GOOD FAITH, FOR VALUE, BEFORE MATURITY, AND WITHOUT NOTICE OR KNOWLEDGE OF ANY DEFECT IN THE TITLE OF THE PERSON FROM WHOM THEY ACQUIRED THEM.

In the evidence on the part of the respondent The Tradesmen's National Bank, on his cross-examination Anthony Halsey, its cashier, at page 70 of the printed record, says, "At the time of the said transactions with said B. S. Midgely and prior thereto, the said Midgely was and had been a dealer in the Tradesmen's National Bank;" at

page 71 he also says that the first time he read the convertible clause in the bonds Nos. 2070 and and 2425 was when the appellant came to the bank, that, as appears also in his evidence to be found at page 69 of the printed record, occurred in February, 1870.

Judge Blatchford, in his opinion on the decision of this case, at page 94 of the printed record says, " It is undoubtedly true that the registered owner " of the scrip stock cannot exercise an option of " converting his scrip stock into full paid stock, " without producing or surrendering his bond, " although he might vote for directors without " producing his bond. *But there is nothing to pre-* " *vent his parting with his position as a mere mort-* " *gage creditor by passing the title to the debt* by " delivery, by manual tradition of the bond, with- " out transferring the scrip stock. The new " holder of the debt will not acquire the right to " vote as a stockholder, or any other right of a " stockholder, or the right to convert the scrip " stock into full paid stock. *But he will be a* " *creditor* entitled to payment of the coupons and " of the principal, and to the security of the mort- " gage. In the bond the acknowledgment of in- " debtedness to the persons named, or bearer, in " the sum named, with the promise to pay that " sum, and the interest named, on the presenta- " tion and surrender of the coupons annexed, *is a* " *distinct and separate obligation from anything else* " *in the bond.* The *agreement in regard to the* " *making full paid stock* out of the scrip stock " attached to or accompanying or issued with the " bond *is an an additional and supplementary agree-* " *ment.*"

Judge Blatchford also, on page 95 of the printed record, concludes " that if the scrip cer-

"tificates and the articles of association had been "before the officers of the banks who took these "bonds, when they took them, no information "would thereby have been conveyed to them that "the bonds were not transferable by delivery."

And we submit with great respect that the judge could not properly have taken a different view, and that even had Mr. Halsey the cashier, read the convertible clause in them at the time he took the bonds Nos. 2070 and 2425, in behalf of his bank, and parted with the money of the bank on faith of them, or even had the scrip-stock been attached he could have learned nothing in respect to the negotiability of the bonds adverse to the title thereto of the party with whom the bank was dealing.

Fifth Point.—THE BANK WAS NOT CHARGEABLE WITH ANY DEGREE OF NEGLIGENCE IN THAT THEIR CASHIER OMITTED TO READ THE CONVERTIBLE CLAUSE IN THE BOND—OR, IF THERE CAN BE JUSTLY IMPUTED ANY DEGREE OF NEGLIGENCE IS THIS RESPECT, EVEN GROSS NEGLIGENGE WILL NOT AFFECT OR IMPAIR THE GOOD FAITH OF THE TRANSACTION; OR THE TITLE OF THIS BANK TO, OR THEIR RIGHT TO HOLD, THE TWO BONDS AND COUPONS.

In Magee *v.* Badger, 34 N. Y. Report, 247; Porter, J., says: "one who purchases commercial "paper for full value before maturity, without "notice of any equities between the original par- "ties, or of any defect of title, is to be deemed a "*bona fide* holder. *He is not bound, at his peril, to be* "*upon the alert for circumstances which might pos-* "*sibly excite the suspicions of wary vigilance. He*

"*does not owe* to the party who puts negotiable "paper afloat, *the duty of active enquiry to avert* "*the imputation of bad faith.* The rights of the "holder are to be determined by the *simple test of* "*honesty and good faith* and *not* by a speculative "issue as to his *diligence or negligence.*"

The same doctrine was reasserted by the same judge in the case of Belmont *v.* Hoge, 35 N. Y., R., p. 67.

In Goodman *v.* Harney, 4 Adol. & Ellis, 870, Lord Denman C., J., said: "I believe that "we are all of opinion that gross negligence only "would not be a sufficient answer where the party "has given a consideration for the bill – gross "negligence may be evidence of *mala fides*, but it "is not the same thing." We have shaken off the last remnant of the contrary doctrine. Where the bill has passed to the plaintiff without any proof of bad faith in him, there is no objection to his title.

In the *Bank of Rome* v. *The Village of Rome*, 19 N. Y. R, p, 20, Comstock, J., in delivering the opinion of the court, at p. 23, says: "The bonds were payable to bearer and although under the corporate seal of the village, they were negotiable instruments in such a sense as would exempt them in the hands of a *bona fide* holder, from a defense which might be available against the railroad company."

And again, in referring to the decision of the chancellor and the Court of Errors, in the case of *Delafield* v. *The State of Illinois*, 2 Hill N. Y. R., 177, "That decision rested on a principal entirely "familiar in the law of negotiable paper, and of "no doubtful application to the present case."

In the case of *Fisher* v. *The Morris Canal & Banking Company*, decided in the Court of Appeals of New Jersey, Amer. Law Reg., May, 1855, p. 423, speaking of the effect of railroad bonds payable to bearer, Justice Elmer says: "We suppose "the common usage to transfer them by delivery "without inquiry as to the title of the transferee "would justify us in holding these securities to "differ from common obligations in being so far "negotiable that the *bona fide* possessor shall be "held to have a good title. The obvious intent of "such companies is *that the bonds should be sale-* "*able free* from all questions of equity. To de- "clare them subject to the equities existing in the "case of ordinary bonds upon every transfer of "would be to strike a blow at the credit of them "the great mass of these securities now in the "market the consequence of which it would be im- "possible to predict."

In *Murray* v. *Lardner*, 2 Wallace, U. S. R., 110, it was held that coupon bonds of the ordinary kind payable to bearer, pass by delivery and a purchaser of them in good faith is unaffected by want of title in the vendor.

That the burden of proof on a question of such faith, lies on the party who assails the possession.

Mr. Justice Wayne, in delivering the opinion of the court in that case, says:

"The possession of that paper carries the title "with it to the holder. The possession and the "title are one and inseparable. The party who "takes it before due for a valuable consideration "without knowledge of any defect of title and in "good faith holds it by a title valid against all "the world. *Suspicion of defect of title or the knowl-* "*edge of circumstances which would excite such sus-* "*picion in the mind of a prudent man*, or *gross neg-*

"*ligence* on the part of the taker at the time of the "transfer, *will not defeat his title.* That result can "be produced only by bad faith. The burden of "proof lies on the person who assails the right "claimed by the party in possession.'"

In *Lord* v. *Wilkinson*, 56 Barb. N. Y. R., p. 593. By Bordman, J., it is said, "In such a case it is necessary to prove more than negligence in taking the paper, fraud, *mala fides* must be shown," also that "*the circumstance of the purchaser forgetting or omitting to look for the notice of the theft* is no evidence of *mala fides* (citing Raphael *v.* Bank of England, 17 C. B., 161).

In *Birdsall* v. *Russell*, 29 N. Y., 220, at p. 250, it is said by Wright, J., "The purchaser of a "bond or other negotiable instrument in open "market and in the usual course of business, *is* "*not bound to make such* (a critical) *examination to* "*escape the imputation of bad faith in the purchase*" and again—

"The rights of a purchaser are not to be af- "fected by constructive notice unless it clearly "appear that the inquiry suggested by the facts "disclosed at the time of the purchase, would, if "fairly pursued, result in the discovery of the de- "fect existing but hidden at the time. There "must appear in the nature of the case *such a* "*connection between the facts disclosed* and the "further *facts to be discovered that the former may* "*be said to furnish a clue, a reasonable and material* "*clue to the latter.*"

Sixth Point.—THERE IS NO PRETENCE THAT THE BANK HAD ACTUAL NOTICE OF ANY DEFECT IN THE

TITLE TO THE BONDS,—AND NO CONSTRUCTIVE NOTICE IS IMPUTABLE TO IT. HAD THE SCRIP OR CERTIPICATE OF PREFERRED STOCK BEEN STILL ATTACHED AT THE TIME THE BANK TOOK THE BONDS, IT WOULD NOT HAVE AFFORDED ANY INFORMATION THAT THE BONDS WERE NOT NEGOTIABLE.

Seventh Point.—THEY WERE NOT REGISTERED BONDS;—THEY WERE NOT SUCH ON THEIR FACE,—NOR DID THE ARTICLES OF ASSOCIATION OF THE RAILWAY COMPANY MAKE THEM SUCH.

Eighth Point.—IF EVEN THEY WERE SUSCEPTIBLE OF BEING MADE REGISTERED BONDS, AND THEIR NEGOTIABILITY THIS RESTRICTED,—THE APPELLANT FAILED TO HAVE THE ENTRIES MADE UPON THEM BY FILLING THE BLANKS ENDORSED THEREON TO GIVE NOTICE OF THEIR OWNERSHIP.

Ninth Point.—THERE WAS NO ERROR IN THE DECREE OF THE CIRCUIT COURT, IN ANY RESPECT ASSIGNED FOR ERROR, BY THE APPELLANT, AND THAT THE DECREE SHOULD THEREFORE BE AFFIRMED, WITH COSTS.

JOHN S. WOODWAMD,
Of Counsel for Tradesmen's National Bank.

Supreme Court of the United States.

No. 219.

IN EQUITY.

CHARLES B. HOTCHKISS, Appellant,

vs.

THE NATIONAL SHOE & LEATHER BANK OF THE CITY OF NEW YORK, and THE TRADESMEN'S NATIONAL BANK, Appellees.

Appeal from the Southern District of New York.

Brief of the National Shoe & Leather Bank of the City of N. Y.,

By HENRY N. BEACH,

Of Counsel.

IN THE

Supreme Court of the United States.

October Term, 1874.

CHARLES B. HOTCHKISS, APPELLANT, *vs.* THE NATIONAL SHOE AND LEATHER BANK OF NEW YORK CITY, AND THE TRADESMEN'S NATIONAL BANK, APPELLEES. | *No.* 219. In Equity.

Brief of Counsel of the National Shoe & Leather Bank of the City of New York, one of said Appellees.

I.

The *first* general proposition submitted, on behalf of said appellees is, that this court has no jurisdiction to review on appeal the several judgment of the Circuit Court in its favor, as the statute limiting appeals from the Circuit Court is confined to cases where "the matter in dispute exceeds the sum "or value of two thousand dollars, exclusive of costs."

2 Stat. at Large, Chap. 40, § 2, p. 244.

1. In the case at bar, the matter in dispute, so far as affects this appellee, is a coupon bond of the Milwaukee & St. Paul R. R. Co., No. 1947, for $1,000, with interest due thereon from July 1, 1869 (Coupon No. 15) to March 4, 1873 (the date of the decree), at seven per cent. per annum, which, estimating the bond at par, amounts to $1,256.87.

In the absence of proof, such a bond is presumed to be worth the face.

Welch v. *Sage*, 47 *N. Y. R.*, 150.

But if its value be estimated at ninety-two per cent. of its par value, which was the market price or value at the time the same was taken as a collateral security by this appellee (see Rec. fol. 127, and Opinion, fol. 170) it is worth still less. And there is no reason for supposing, that the bond in question was worth more, when this bill was filed, or at any time since.

Brown v. *Shannon et al.*, 20 *How.* (*U. S.*), 58.

2. The appellant cannot increase the value of the bond, which is the matter in dispute, by adding to the principal sum ($1,000) the aggregate of the coupons annexed to it, falling due after the date of the decree. Such coupons merely represent unearned interest, and "are substantially but copies from the body of the bond in respect to the interest." There was but one contract for the payment of money, and that evidenced by the bond.

City of Kenosha *v.* Lamson, 9 Wall. (U. S.), 483.
City of Lexington, *v.* Butler, 14 *Id.*, 296.

3. The appellate jurisdiction of this court depends upon the sum or value of the matter in dispute *between the parties having independent interests.*

Stratton *v.* Jarvis, *et al.*, 8 Peters., 11.
Clifton *v.* Sheldon, 23 How. (U. S.), 481.
Oliver *v.* Alexander, 6 Peters., 149, 150.

4. The same reason exists for cutting off the appeal in the case at bar as if the suit had been brought against this appellee separately and not jointly with its co-appellee.

Seaver *v.* Bigelow, 5 Wall (U. S.), 211.
Rich *et al. v.* Lambert *et al.*, 12 How (U. S.), 347, 360.
Spear *v.* Place, 11 *Id.*, 527.

5. The bill and answer of this appellee show that only one

bond (No. 1947) is in the possession of this appellee, which is a stranger to the other two bonds.

Record, fols. 4, 40, 41.

6. If the decree below had been against this appellee, and in favor of its co-appellee alone, no appeal on behalf of this appellee would lie.

Therefore, it is respectfully submitted that the appellant here cannot have an appeal from the several judgment or decree in favor of this appellee, and that the same should be dismissed as to this appellee for want of jurisdiction.

II.

The *second* general proposition submitted on behalf of said appellee is that the appellant's claim, upon which the bill is founded, to wit, that the several coupon bonds and certificates of scrip preferred stock severally attached thereto are not severable and divisible, but constitute one obligation and contract, and that, in fact, the appellees did not acquire title to the bonds in question, because the means which were used to give them title were not, in the eye of the law, efficient for that purpose; or that, if the bonds and scrip preferred stock are severable and divisible, and the bonds are transferable by delivery, that the appellees had notice of the appellant's title and of the theft by which he was deprived of his property; and are not, therefore, *bona fide* holders of the bonds in question. Such claim of the appellant, we submit, cannot be maintained.

The bill is founded upon premises which are contrary at once to a reasonable construction of the contracts and the adjudications of both Federal and State courts, to wit, that the bond or obligation of the company, with the coupons attached (severally payable to bearer), together with the certificate of "scrip preferred stock" alleged to have been attached thereto, constitute but one instrument, and that the several parts are not capable of separation and division in such way as that the title to one part thereof could be transferred to one person and the title to some other part thereof to another person;

and, as a deduction or legal sequence from this proposition, that if one part of this *duplex* instrument (as for example, the "scrip preferred stock") is not negotiable, the other part (the bond) is not negotiable; and that unless both parts have been transferred by the appellant, who was the lawful holder and owner thereof on the 29th of November, 1868, the transferee of any part thereof cannot get a good title; and as he has not transferred the same to the appellees, they are not *bona fide* holders of the bonds and coupons, which were transferred to them without an assignment of the "scrip preferred stock."

The question to be discussed and determined is, are his premises sound and his conclusions legitimate? This appellee denies both premises and conclusions.

First.—The law as to *the entirety* of a contract executed in several parts has been well laid down, by an elementary writer, in these words: "The question whether a contract is entire or separable is often of great importance. Any contract may consist of many parts; and these may be considered as parts of one whole, or as so many distinct contracts entered into *at one time* and expressed in the same instrument, but not thereby made one contract.

"No precise rule can be given by which this question, in a given case, may be settled. Like most other questions of construction, it depends upon the intention of the parties, and this must be discovered in each case by considering the language employed and the subject matter of the contract."

2 Parsons on Cont. (5th Ed.), 517.

"The contract may be contained in several instruments, which, *if made at the same time, between the same parties and in relation to the same subject*, will be held to constitute but *one contract*" (see cases cited in note x).

2 Pars. on Cont. (5th ed.), 503.
Chitty on Cont. (9th Am. ed.) [89], note 1.
Cornell *v.* Todd, 2 Denio, 133.
Benedict *v.* Cowdin, 49 N. Y. R., 401.

Applying this rule to the present case, it is very clear that

the two instruments did not consiitute an entire or single contract, but on the contrary, that they were several distinct and different contracts or agreements.

1. In his bill appellant avers that the R. R. Co., on or about *the 6th day of May*, 1863, executed three certain obligations and contracts under the seal of the said company, and attested by the signatures of the president and secretary thereof, of which copies were annexed, marked respectively Exhibits 1, 2, and 3.

Rec. fol. 2.

Exhibit 1, annexed to said bill, consists of Bond No. 1947, and certificate of scrip preferred stock No. 7668, alleged to have been thereto attached. On inspection it appears that the bond is dated *May* 6, 1863, under the seal of the company, and attested by the signatures of the president and secretary, and is an obligation of the R. R. Co. to Isaac Seymour, Horace Galpen, William Gould, Fred. P. James, D. M. Hughes, George Smith and Francis Vose, citizens of the State of New York, or bearer, to pay $1,000, &c., with coupons, or interest warrants, annexed; and a certificate of certain trustees endorsed on the back; but that the certificate No. 7668 was issued to Charles B. Hotchkiss, of Bridgeport, *September 17th*, 1864, signed by the president and transfer agent, and countersigned by the registrar of transfers—certifying that said Hotchkiss is entitled to ten shares of the capital stock of said company designated as "scrip preferred stock" in the articles of association of the company—with blank transfer on the back of it.

Rec. fols. 8–12.

It further appears from the evidence that the first certificate of scrip preferred stock, which accompanied said bond No. 1947 was for ten shares of said stock issued to Russell Sage (fol. 62), a true copy of which is "Exhibit 6," (fols. 137–139) which was certificate No. 1947, dated *Nov.* 2, 1863; that Sage claims to have transferred bond No. 1947, by transfer No. 146 on the books of the company (fol. 62), which transfer was dated *Dec.* 23, 1863, and marked Exhibit 7 (fol 107) *which was not in fact a transfer of the bond*, but of twenty shares of

stock to F. P. James & Co., of New York; that the original certificate No. 1947, was surrendered and a new certificate, No. 7086 was issned in lieu of it (fol. 62); that the next transfer of this stock on the books was transfer No. 253 which was dated *Sept.* 17, 1864, and marked Exhibit 8 (fol. 109) which was a transfer of 40 shares of stock, "also mortgage bonds Nos. 1048, 1049, 2070, 1947," to Charles B. Hotchkiss, of New Haven, Conn. On that transfer being made, certificate No. 7086 was surrendered, and a new certificate, No. 7668, was issued to Charles B. Hotchkiss, in his name, in lieu of it, which is outstanding and has not been surrendered (fol. 62); that the certificate attached to bond No. 1947 was pinned and folded in —inside of the bond. It was not engraved on the same sheet as the coupons are (fol. 68) but that certificate which was originally issued with this bond was not attached to it when it came into the hands of the appellant.

We deduce from this evidence the conclusion that the certificate of scrip preferred stock was a separate undertaking, not made at the same time as the bond, nor between the same parties, nor in relation to the same subject, and with the bond did *not* constitute but one contract.

2. If we examine the articles of association of the railroad company to ascertain what its intention was, though we claim that the appellees are not chargeable with notice of whatever the articles of association contained (Mercer Co. *v.* Hackett, 1 Wall., U. S., 93), we shall discover that the obligors did not treat the scrip and bonds as one instrument only, but as two essentially different and distinct contracts.

The *third* subdivision of these articles defines what the "*scrip preferred stock*" is, the amount and manner in which it is to be issued; it was not entitled to any dividends or other profit or increase from the income or assets of the company; it was to *accompany* the mortgage bonds of the company, and upon its surrender with bond, the holder was entitled to receive the same number of shares of preferred full paid stock (fols. 87, 90).

The *sixth* subdivision of those articles describes the bonds of the company, the amount and terms thereof, how issued,

which were to bear interest at the rate of seven per cent. per annum, payable semi-annually, were to be secured by a mortgage, and to be convertible at the option of the holder into preferred stock, on certain terms ; that the bonds should be signed by the president or vice-president and secretary, and the seal of the company affixed thereto. And it was further therein provided that the said mortgage should contain covenants and agreements authorizing the bondholders to vote in all stockholders' meetings as if they were stockholders, to the amount of their bonds (fols. 95, 99).

The company kept a bond ledger and a stock ledger, which were separate and distinct books of entry (fols. 62–64). By reference to Exhibit 12 (fol. 116) it will appear that *the bonds* are not referred to in the stock ledger in appellant's account.

The certificate of "scrip preferred stock" was to accompany, *not to be attached* to, each bond. The bond was to be surrendered with the certificate before the holder shall be entitled to receive full-paid stock. But the company obligated itself by its bond to pay to the bearer the sum of money therein expressed, on the first day of January, A. D. 1893, with interest payable semi-annually on presentation and surrender of the coupons annexed, as they severally become due, but payment of the bond was not conditioned upon the presentation and surrender of the certificate.

See construction by the court below of the bond, and the certificate, and the articles of association (fols. 174–176).

The understanding of the parties is to be learned from the terms of the contracts.

Westcott *v.* Thompson, 18 N. Y. R., 363.

And the court is bound to construe the words "stock" and "bond" used in these articles of association according to the usual, ordinary, commercial and legal meaning of these words, which describe "*things*" plain and unambiguous.

3. "Stock" and "bonds" each have a distinctive, well defined commercial and legal character, which clearly distinguishes them as several instruments.

(*a.*) A certificate of stock, which is not a contract for the payment of money, and is not in terms negotiable, is for these reasons a different thing from a "coupon bond."

"Certificates of stock in a railroad company are not securities for the payment of money that may be transferred, subject to the rules applicable to negotiable paper; on the contrary, they are simply the muniments of the holder's title to a given share in the franchises of the corporation of which he is a member.

Edward's on Bills, 2 ed., 59.
McCready *v.* Rumsey, 21 How. P. R., 271.
Mech. Bk. *v.* N. Y. & N. H., R. R. Co., 13 N. Y. R., 629.

Certificates of stock are assignable, but not negotiable.
Railroad Co. *v.* Howard, 7 Wall., 415.

(*b.*) Coupon bonds (railroad or municipal) payable to bearer, pass by mere delivery, and are negotiable instruments; and are therefore treated *as negotiable paper;* a purchaser of them in good faith is unaffected by want of title in the vendor.

White *v.* Vt. & Mass. R. R. Co., 21 How. (U. S.), 575.
Mercer Co. *v.* Hacket, 1 Wall., 83.
Gelpcke *v.* City of Dubuque, Id., 176, 206.
Murray *v.* Lardner, 2 Id., 110.
Thompson *v.* Lee Co., 3 Id., 327.

In *White* v. *Vt. & Mass. R. R. Co., supra,* Mr. Justice Nelson, in giving judgment, says: "The usage and practice of railway companies, and of the capitalists and business men of the country, and decisions of courts, have made this class of sureties negotiable instruments."

(*c.*) Stock in railway corporations was formerly treated as real estate (1 Redfield on Railways, pp. 110–112). But this idea has long since exploded, and the courts have now so clearly defined the distinctive character of these securities that Comstock, J., says, in the case of *Mech. Bk.* v. *N. Y. & N. H. R. R. Co., supra*: "The distinction between such a security (a

coupon bond) and a stock certificate, which, by its very terms, is not negotiable, and which is not a security for money at all, it seems to me is too plain to escape observation."

We submit, therefore, that in their inception and in their nature and in their distinctive qualities, the certificate of stock and the bond are several instruments.

4. If the bond and certificate were intended to form one obligation and contract, it would have been necessary to have surrendered the bond with the surrender of each certificate, and the company would have been obliged to issue a new bond simultaneously with the issue of each new certificate, which would have been impracticable, by reason of the mortgage security, and it never could have been the intention of the company to have deemed them as one instrument from the necessity of the case.

5. The certificate of "scrip preferred stock" constitutes no part of the bond. This precise question was judicially considered and determined by the Court of Appeals of the State of New York, in reference to similar bonds.

Peckham, J., says: "This certificate constitutes no part of the bond. The bond is entire and perfect without it (Hodges *v.* Shuler, 22 N. Y. R., 118). The admission of the debt and the promise to pay in the bond, are in no degree qualified by the certificate. The statement in regard to the certificate is simply an addition to the bond—a promise to make the "scrip preferred stock attached to this bond," full paid stock at a certain time "upon surrender of the bond and the unmatured interest warrants." Thus the holder of the bond has the additional remedy of surrendering it up in exchange for the stock of the company, instead of the money the bond secures to him.

Welch *v.* Sage, 47 N. Y. R., 148.

Folger, J., in a later case, says: "In Welch *v.* Sage (47 N. Y. R., 148), the bonds were perfect and negotiable without the certificate, which had been detached."

Ledwich *v.* McKim, 53 N. Y. R., 313.

Second.—The appellant concedes that if the bonds in question are no more in form and substance than ordinary coupon

bonds or promissory notes, payable to bearer, that the appellees, if *bona fide* holders, might obtain a good title to them. But he contends, that the clause in the bond referring to the "scrip preferred stock attached to this bond" (there being no certificate attached to it at the time the appellees acquired possession of the bonds), affected its negotiability, and deprived it of this quality.

The proofs show that, so far as this appellee is concerned, there was no scrip certificate attached to the bond No. 1,947, when the bank took it, and that the attention of its cashier was not called to the proviso in the bond in relation to the scrip preferred stock, until after it had been taken by him and he had put it in the hands of a broker for sale.

Test. of Crane, fol. 129.

The question we are now considering is, does this convertible clause affect the *negotiability* of the bond? It has been decided by the Court of Appeals in the State of New York that a similar option or convertible clause incorporated in a promissory note made by a railroad company, did not affect its negotiability, nor change its character as a note. And the reasoning of the court is applicable to this case, although in that case there was no reference to a collateral undertaking.

Wright, J., says: "We are of the opinion that the instrument wants none of the essential requisites of a negotiable promissory note. It was an absolute and unconditional engagement to pay money on a day fixed, and although an election was given to the promissees, upon a surrender of the instrument six months before its maturity, to exchange it for stock, this did not alter its character, or make the promise in the alternative, in the sense in which that word is used respecting promises to pay. The engagement of the R. R. Co. was to pay the sum of $1,000 in four years from date, and its promise could only be fulfilled by the payment of the money at the day named."

Hodges *vs.* Shuler *et al.*, 22 N. Y. R., 114.
Andrews *vs.* Hart, 17 Wis., 297.
Muhlenburgh *vs.* P. & R. R. R. Co., 40 Pa. St. R., 16.
Commonwealth *vs.* Com'rs of Alleg. Co., 37 *Ib.*, 237.

Third.—But the appellant contends that if the bonds and scrip preferred stock are severable and divisible, and the bonds are transferable by delivery, that the appellees had notice of the appellant's title, and of the theft by which he was deprived of his property—not that they "had *ocular proof* of his ownership of the securities, or of the felonious taking of the property from his possession," and that they are not, therefore, *bona fide* holders of the bonds in question. But this appellee insists that it is a *bona fide* holder and purchaser in good faith, and that it acquired Bond No. 1,947 under such circumstances as will protect its title.

The testimony of John M. Crane, the cashier of this appellee, shows that his bank received the bond in question from Waterhouse, Midgeley & Co., as security for a loan or discount of $800 which was made to that firm, without actual notice of the convertible clause in question, and in good faith, believing it to be an ordinary coupon bond, payable to bearer. That the same was taken, after diligent inquiry as to its value, in the usual course of business, from a dealer of the bank, and with no suspicion or knowledge that the appellant claimed to be the owner of the bond, or of his alleged robbery, and that the bank had never dealt in these bonds before. The loan was made by the bank through its cashier (fols. 126–134).

1. Possession is *prima facie* evidence of ownership.
Carr *v.* Le Fevre, 27 Pa., St. R., 413.

2. Coupon bonds, payable to bearer, pass by delivery. And a purchaser of them in good faith is unaffected by want of title in the vendor. The burden of proof on a question of such faith, lies on the party who assails the possession.
Murray *v.* Lardner, 2 Wall., 110.
Thompson *v.* Lee Co., 3 Id., 327.

3. The *onus probandi* is upon the appellant to show *mala fides* on the part of appellees, as he has charged it in his bill (fol. 4); but there is not a scintilla of proof of this brought forward by appellant (fol. 178). On the contrary, the appellees have shown their good faith beyond the shadow of a doubt.

Bad faith must be shown affirmatively, to impeach the title of the appellees.

Swift *v.* Tyson, 16 Peters, 1.
Goodman *v.* Simmonds, 20 How. (U. S.), 364–368.
Seybel *v.* Nat. Cur. Bk., 54 N. Y., 302.
Lord *v.* Wilkinson, 56 Barb., 593.

4. In the case of commercial paper (and the same rule applies to the case at bar), a *bona fide* purchaser gets a good title, although it may have been stolen and transferred by the thief.

Turnbull *v.* Bowyer, 40 N. Y. R., 460.
Hall *v.* Wilson, 16 Barb., 548.
Steinhart *v.* Boker, 34 Id., 443.

5. In defining what constitutes a *bona fide* holder of commercial paper, and in what way it may be acquired, the Court of Appeals of the State of New York has held that "he is not bound to make inquiries nor to act upon circumstances which would put an ordinarily careful man upon inquiry, unless they are of such a character as would impeach the honesty of the holder. Gross negligence, even, has been held insufficient to impeach his holding, when a party has given consideration for the bill." (See cases cited.)

Griggs *v.* Howe, 3 Keyes R., 172.
Birdsall *v.* Russell, 29 N. Y., 220.
Williams *v.* Tilt, 36 Id., 319.
Park Bank *v.* Watson, 42 Id., 493.
Welch *v.* Sage, 47 Id., 146, 147.
Seybel *v.* Nat. Cur. Bk., 54 N. Y., 294–296.
Goodman *v.* Simonds, 20 How. (U. S.), 368.

The following rule may be deduced from the authorities, that the rights of the holder are to be determined by the simple test of honesty and good faith, and not by any speculative issue as to his diligence or negligence.

Magee *v.* Badger, 34 N. Y. R., 247.
Belmont Bank *v.* Hoge, 35 Id., 65.

Fourth.—Appellant contends that the bond in question is in fact a registered bond, and therefore not negotiable in any sense.

Brief, p. 15.

It is conceded that when the bonds were issued, provision was made by the company on the back of the bond for attesting by the transfer agent "the date of transfer" and "to whom transferred." Had these blanks been filled up, it would have appeared on the back of the bond; that bond, No. 1,947, had been transferred as follows:

November 2, 1863, to Russell Sage.
December 23, 1863, to F. P. James & Co.
September 17, 1864, to C. B. Hotchkiss.

This would have been notice that C. B. Hotchkiss was the last transferee, and would have had the effect of registering the bond in his name. Then Waterhouse, Midgely & Co. could not have negotiated it to this appellee, who insists that the appellant was guilty of laches or contributory negligence, by means of which he has lost his bond, and cannot, therefore, recover.

2 Parsons on Notes and Bills, p. 259, 260.

Fifth.—If bond No. 1,947 did not pass by delivery, then Russell Sage acquired no title to it, nor did he impart title to F. P. James & Co., and hence the appellant has no title to it, and is not entitled to recover in this action.

Peckham, J., says (Welch *v.* Sage, 47 N. Y. R., 149): "These bonds could have been easily made negotiable only upon the transfer of the certificates as well as of the bonds. Then the transfer of one without the other would pass no title." But the company did not make them so.

Sixth.—If the bond and scrip accompanying it are two several instruments, as we insist, then it follows that the separation of one from the other is not an alteration or mutilation of the bond, and the argument of appellant's counsel based

upon that theory is without applicability to the case at bar and cannot affect the issue.

We have a whole bond, and there is here no controversy as to whether there shall be a recovery by one or the other holder of the fragments of a security.

Seventh.—The appellees, in taking the bond, are not chargeable with notice of whatever the articles of association of the company contained in respect to the bond.

Grier, J., says: "We have decided in the case of Commissioners of Knox Co. *v.* Aspinwall, that when the bonds on their face import a compliance with the law under which they were issued, the purchaser is not bound to look further."

Mercer County *v.* Hackett, 1 Wall., 93.
Comrs. of Knox Co. *v.* Aspinwall, 21 How., 545.
The Royal Brit. Bk. *v.* Tarquand, 6 El. & Bl., 327.

Eighth.—If it be the law that the scrip certificate, spoken of in the bond as attached to it, must be regarded as present to the view and knowledge of any party taking the bond, then we submit that no information could thereby have been conveyed to them that the bonds were not transferable by delivery. There was nothing to prevent the plaintiff himself from parting with the bonds, and thus parting with the right to convert the scrip stock into full paid stock, because he would be unable thereafter to surrender the bonds, while still retaining all other rights incident to the ownership of the scrip stock (Blatchford, J.), opinion, rec., fol. 177.

Peckham, J., says (Welch *v.* Sage, *supra*): "It would not be a legitimate inference that the purchaser would find in the certificate the true owner of *the bond*, when the bond itself made no such disclosure, nor gave any intimation that the certificate would afford any more light upon that point."

Ninth.—The purchaser of a bond or other negotiable instrument, in open market and in the usual course of business, is

not bound to make a close and critical examination in order to escape the imputation of bad faith in the purchase.

The rights of a purchaser are not to be affected by *constructive notice* unless it clearly appears that the inquiry suggested by the facts disclosed at the time of the purchase would, if fairly pursued, result in the discovery of the defect existing, but hidden at the time.

Birdsall *v.* Russell, 29 N. Y. R., 250.

Appellant contends that actual notice and constructive knowledge of the contents of the scrip, coupled with its physical absence, are equivalent not only to a present assertion of title by him, but to a refusal to transfer that title. This view is effectually extinguished by the more reasonable conclusions arrived at by the court below, and by Mr. Justice Peckham in the case so often heretofore cited of Welch *v.* Sage.

If this court will examine the certificate, it will observe that there is nothing in it to show that Charles B. Hotchkiss is *the owner* of the bond No. 1,947; or that there is any connexion between the two instruments which connects them inseparably one to the other; or that the bond is not transferable by delivery; or that he has not transferred that bond if he ever was the owner; or that he then asserted title in himself to anything but the ten shares of stock; or that he refused to transfer the title to the bond.

Tenth.—The appellant has shown no equities in support of his bill; nor has he impeached the title of this appellee as a *bona fide* holder of bond No. 1,947. We therefore respectfully submit that the decree of the court below in favor of this appellee be affirmed, with costs.

HENRY N. BEACH,
Of Counsel for the National Shoe & Leather Bank of the City of New York, one of the appellees.